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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 34

BROTHERHOOD OF RAILROAD TRAINMEN, PETITIONER,

vs.

VIRGINIA, EX REL. VIRGINIA STATE BAR.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA

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Letter from C. R. Maher to W. P. Kennedy and W. J. Weil, dated June 30, 1959 and attached letter from Edward B. Henslee, Jr., to C. R. Maher dated June 30, 1959 including pen notation	1210	1241

	Original	Print
Record from the Chancery Court of the City of Richmond, Virginia—Continued		
PLAINTIFF'S CHASE EXHIBITS—Continued		
"H"—Continued		
Letter from C. R. Maher to W. P. Kennedy and W. J. Weil dated July 14, 1959, including pen notation	1211	1243
Letter from C. R. Maher to W. P. Kennedy and W. J. Weil, dated July 16, 1959 with pen notation	1212	1244
Letter from C. R. Maher to W. P. Kennedy and W. J. Weil, dated August 19, 1959, attached check stub #M44086, attached bill dated August 10, 1959 from Bernard M. Savage to Brotherhood of Railroad Trainmen and attached paper headed "Salary Account for the Year of 1959" including pen and pencil notations	1213	1245
Letter from C. R. Maher to W. P. Kennedy and W. J. Weil, dated September 25, 1959 and attached letter from Carl Yaeger, Jr. to C. R. Maher, dated September 22, 1959 including pen notations	1214	1249
Letter from C. R. Maher to W. P. Kennedy, and W. J. Weil, dated October 5, 1959 including pen notation	1215	1251
Letter from C. R. Maher to W. P. Kennedy and W. J. Weil, dated December 21, 1959, attached check stub #M49457, attached memorandum from W. P. Kennedy to Floyd Lehman, dated December 17, 1959 and five attached bills of Zelenko and Elkind to Brotherhood of Railroad Trainmen all dated December 14, 1959 including all pen notations	1216	1252
Letter from C. R. Maher to W. P. Kennedy and W. J. Weil, dated December 30, 1959 and attached letter of J. Murray Dunn to C. R. Maher, dated December 22, 1959 including pen notations	1217	1260

	Original	Print
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PLAINTIFF'S CHASE EXHIBITS—Continued		
"I"—1960 Deposit Slips showing contributions to the Department of Legal Counsel by Regional Counsel in 1960	1218	1262
Letter from C. R. Maher to W. P. Kennedy and W. E. B. Chase, dated April 5, 1960 including pen notations	1218	1262
Letter from C. R. Maher to W. P. Kennedy and W. E. B. Chase dated April 7, 1960 including pen notations	1219	1263
Letter from C. R. Maher to W. P. Kennedy and W. J. Weil, dated March 31, 1960 including pen notations	1220	1264
"J"—Payroll records of the Brotherhood of Railroad Trainmen covering Regional Investigators	1221	1265
Payroll record of I. B. Byers	1221	1265
Payroll record of R. J. Calkins	1222	1266
Payroll record of G. A. Clinkenbeard	1225	1268
Payroll record of R. M. Crago	1229	1272
Payroll record of H. S. Dragmire	1232	1275
Payroll record of G. A. McNurlan	1235	1278
Payroll record of W. P. Meroney	1239	1282
Payroll record of R. T. Miller	1240	1283
Payroll record of R. H. Moss	1243	1286
Payroll record of G. J. Rerat	1247	1290
Payroll record of W. Siess	1251	1294
Payroll record of E. A. Stouvenal	1255	1298
Payroll record of D. O. Taylor	1257	1300
Payroll record of N. W. Tingle	1261	1304
Payroll record of M. M. Verbon	1265	1308
"K"—Schedules of the Financial Operation of the Legal Aid Department 1950 thru 1960	1267	1310
"L"—Audit of the Legal Aid Department for the years 1954 thru August 31, 1961	1278	1321

	Original	Print
Record from the Chancery Court of the City of Richmond, Virginia—Continued		
PLAINTIFF'S BYINGTON EXHIBIT "A"—The State of Georgia v. B. G. Byington	1282	1325
Special Presentment, Sentence, certificate and Indictment	1282	1325
Report of Evidence	1289	1334
Testimony of Mrs. Neal Wills—		
direct	1290	1335
cross	1294	1340
Betty Ann Queen Doeg—		
direct	1297	1343
cross	1302	1349
Billy Griffin—		
direct	1309	1356
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recross	1315	1362
Parker Whitfield—		
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B. G. Byington—		
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Gerald F. Griffin—		
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[fol. 1]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND, VIRGINIA

COMMONWEALTH OF VIRGINIA, ex rel.,
VIRGINIA STATE BAR, Complainant,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, c/o V. W. Satterwhite, Assistant to the President, 904 West 30th Street, Richmond, Virginia,

and

BERNARD M. SAVAGE, 3100 Mathieson Building, Baltimore 2, Maryland,

and

NORRIS W. TINGLE, 3100 Mathieson Building, Baltimore 2, Maryland, Defendants.

BILL OF COMPLAINT—Filed June 29, 1959

To the Honorable Judge of Said Court:

The complainant respectfully represents to the Court:

1. The complainant, Virginia State Bar, is the administrative agency of the Commonwealth of Virginia, comprised of all lawyers duly qualified and licensed to practice law in the Commonwealth, having the duty to investigate and report all violations of statutes, rules and regulations concerning the practice of law therein.

2. The defendant, Brotherhood of Railroad Trainmen (hereinafter sometimes referred to as the Brotherhood), is a trade union, an unincorporated association, with its headquarters located in Cleveland, Ohio. The Brotherhood is composed of lodges located in all of the forty-eight states [fol. 2] of the United States, twelve of which have their headquarters in the Commonwealth of Virginia and three

of which have their headquarters in Richmond, Virginia. All of the members of said lodges are the employees of some railroad. V. W. Satterwhite, a resident of Richmond, Virginia, is an assistant to the president of the Brotherhood and is an officer of the Brotherhood.

3. The defendant, Bernard M. Savage (hereinafter sometimes referred to as Savage), is an attorney at law and a resident of the State of Maryland. He is not a member of the Virginia State Bar and is not licensed to practice law in the Commonwealth of Virginia. He was formerly designated by the Brotherhood of Railroad Trainmen as its Regional Counsel and, since April of 1959, is now designated as one of its Legal Counsel.

4. The defendant, Norris W. Tingle (hereinafter sometimes referred to as Tingle), is a resident of the State of Maryland and is an employee of both of the other defendants. He is designated by the defendant, Brotherhood of Railroad Trainmen, as its Regional Investigator.

5. The Brotherhood maintains what it calls a "Legal Aid Department" which, while collecting information that is valuable to those who are interested in the welfare of railroad employees, also solicits business through the means of certain of its employees and members of its lodges for various attorneys at law throughout the United States which have been selected by the Legal Aid Department and designated by said department as Regional or Legal Counsel.

6. The solicitation of business for Regional or Legal Counsel has been conducted in the following manner: when a lodge member is injured or killed in the course of his employment, he or his family or estate notifies his lodge and his lodge, acting through its secretary or some other member, notifies the Legal Aid Department of the injury or death; the Legal Aid Department immediately notifies Regional or Legal Counsel of the injury or death; Regional or Legal Counsel, in turn, sends the Regional Investigator, [fol. 3] a person who is employed and paid by both Regional or Legal Counsel and by the Brotherhood, to investigate the happening; in many cases both the lodge to which the

injured man belongs or to which the deceased belonged, acting through its officers and members and the Regional Investigator, advise the injured person or his family, or the family or estate of the deceased, that the claim against the injured or deceased member's employer should not be settled without consulting Regional or Legal Counsel; and the Regional Investigator then arranges for the injured party or family of the deceased to execute the necessary agreements retaining the services of Regional or Legal Counsel on forms which he carries with him.

7. Regional and Legal Counsel handle any and all such matters on a contingent fee basis that is fixed and set by the Brotherhood through its Legal Aid Department and, together with other Regional or Legal Counsel, he supports the Legal Aid Department by paying annually to the Legal Aid Department a sum assessed by said department, the amount of which is determined by the department by the use of a formula that takes into account the volume of fees collected by Regional or Legal Counsel from members of the Brotherhood, their families or estates. Regional or Legal Counsel further makes advances for the support and maintenance of injured Brotherhood members or the families of deceased members pending settlement of claims that he agrees to handle for them.

8. The Brotherhood, Savage as Regional and Legal Counsel for an area which includes the entire Commonwealth of Virginia, and Tingle as Regional Investigator for the Commonwealth of Virginia have engaged in the practices hereinabove referred to and the complainant is advised are engaging in such practices in the Commonwealth of Virginia and in the City of Richmond.

9. Your complainant charges that the practices hereinabove described constitute the unauthorized practice of law in the Commonwealth of Virginia by each of the defendants, the Brotherhood, Savage and Tingle.

[fol. 4] Wherefore, your complainant prays that the Brotherhood, Savage and Tingle be permanently enjoined and restrained from engaging in or continuing the practices hereinabove described and from practicing law, directly

or indirectly, in the Commonwealth of Virginia and from engaging in any activities connected therewith.

Commonwealth of Virginia ex rel., Virginia State Bar, By: Aubrey R. Bowles, Jr., 901 Mutual Building, Richmond 19, Virginia, Its Counsel.

Bowles, Anderson, Boyd, Clarke & Herod, 901 Mutual Building, Richmond 19, Virginia, Of Counsel.

[fol. 5] [File endorsement omitted]

[fol. 11]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

[Title omitted]

ANSWER OF RESPONDENT, BROTHERHOOD OF RAILROAD TRAINMEN—Filed August 7, 1959

The Answer of Brotherhood of Railroad Trainmen to a bill of complaint exhibited against it in the Chancery Court of the City of Richmond, Virginia, by Commonwealth of Virginia, ex rel., Virginia State Bar.

For Answer thereto, or so much thereof as it is advised that it is material it should answer, it answers and says:

1. This respondent Brotherhood admits the allegations contained in Paragraph 1 of Bill of Complaint.

2. This respondent Brotherhood admits the allegations contained in Paragraph 2 of Bill of Complaint.

3. This respondent Brotherhood is not fully informed as to the allegations set out in Paragraph 3 of said Bill with reference to whether defendant Bernard W. Savage is not a member of the Virginia State Bar and is not licensed to practice law in the Commonwealth of Virginia. Respondent Brotherhood admits that Bernard W. Savage is designated as one of its legal counsel.

4. This respondent Brotherhood admits that the defendant Norris W. Tingle is an employee of this respondent

and denies all other allegations of Paragraph 4 of said Bill of Complaint.

5. Respondent Brotherhood admits that this defendant, prior to January 1, 1959, maintained a department which was designated "Legal Aid Department," and further admits that the said department collected information which was, and is, valuable to those who are interested in the welfare of railroad employees. Respondent further avers that on January 1, 1959, the said Legal Aid Department was redesignated as "Department of Legal Counsel." Respondent denies all other allegations in Paragraph 5 of said Bill of Complaint.

[fol. 12] 6. Answering Paragraph 6 of the Bill of Complaint, Respondent Brotherhood admits that when a lodge member is injured or killed in the course of his employment, he or his family or estate notifies the lodge. Respondent further admits that prior to the change of April 1, 1959, hereinafter more particularly set forth, that the lodge in some cases notified the Legal Aid Department and admits that in some cases the Legal Aid Department notified the Regional or Legal Counsel of the injury or death, and further admits that in some cases members and employees of the respondent recommended that Regional or Legal Counsel be consulted before the settlement of claims. Respondent denies all other allegations in paragraph 6 of the Bill of Complaint.

7. Answering Paragraph 7, Respondent Brotherhood admits that Regional and Legal Counsel handled such matters on a contingent fee basis, admits that prior to April 1, 1959, Regional and Legal Counsel supported the Legal Aid Department or the Department of Legal Counsel by contributions based on the ratio which the individual counsel's gross amount of settlements bore to the total settlements of Regional or Legal Counsel throughout the country. Further, answering Respondent avers that individual counsel had agreed with this respondent as to the fee to be charged members of the Brotherhood prior to April 1, 1959. This respondent denies all other allegations of Paragraph 7 of said Bill of Complaint.

8. Answering Paragraph 8, respondent Brotherhood denies all allegations therein and avers that prior to April 1, 1959, it engaged only in those practices alleged which it has previously admitted herein.

9. Respondent Brotherhood denies the allegations set out in Paragraph 9 of said Bill of Complaint. The respondent Brotherhood would show unto the court the following:

(a) That on a referendum questionnaire and majority vote from the members of the lodges of the Trainmen in the United States in 1930, the Brotherhood established a department of Legal Aid Department. The said Legal Aid Department was subject to the provisions of the constitution of the Trainmen and to the authority of the President of the Brotherhood.

[fol. 13] (b) The Respondent Brotherhood further shows that after April 1, 1959, it eliminated certain practices in the operation of its Department of Legal Counsel which had been determined objectionable; that the Brotherhood at its own expense investigates accidents of its members so that it will be acquainted with the cause of said accidents and by so doing it will be able to remedy any violation of the Federal Employers' Liability Act and the Safety Appliance Act. The result of such investigation is made available solely to the injured person or family.

Wherefore, the defendant Brotherhood prays that the Bill of Complaint be dismissed for the reason that the issues raised by the Bill of Complaint are moot and insufficient for want of equity.

Brotherhood of Railroad Trainmen, By Beecher E. Stallard, 1223-29 Cen. Natl. Bank Bldg., Richmond, Virginia.

Certificate of service (omitted in printing).

[fol. 14] [File endorsement omitted]

[fol. 30]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

[Title omitted]

MORE PARTICULARS FURNISHED BY DEFENDANTS—
Filed March 14, 1960

In compliance with an order heretofore entered in this cause, the defendant, Brotherhood of Railroad Trainmen, furnishes the complainant the following information:

Statement of the particulars of each of the certain practices which were eliminated on April 1, 1959, because the practices had been determined to be objectionable.

A. The financial connections between Legal Counsel and the Brotherhood of Railroad Trainmen, and its Legal Aid Department were eliminated. Specifically, the practice by which Regional Counsel reimbursed the Brotherhood for the cost of operating the Legal Aid Department in the ratio that their respective gross recoveries bore to the total gross recoveries by Regional Counsel throughout the country has been abolished. The cost of operating the Department of Legal Counsel is borne solely by the Brotherhood and its members.

B. A practice had developed whereby local lodge officers and members were compensated for their lost time and expenses when they accompanied injured members to the offices of Regional Counsel, whether or not Regional Counsel were retained and, if retained, whether or not any settlement or judgment was paid by the defendant, was determined to be objectionable and was eliminated.

C. Criticism by railroad and others that the title of the Legal Aid Department was deceptive and created an impression that the Department was a charitable organization akin to other Legal Aid Societies was received by the Brotherhood and such nomenclature was determined to be objectionable in some respects. Such objections were a prime consideration in the entitling of the new depart-
[fol. 31] ment as the "Department of Legal Counsel".

D. There was an agreement between Regional Counsel and the Brotherhood that a fee of twenty-five per cent should be charged in each case whether recovery was had by settlement or by judgment, and that the Regional Counsel agreed to, and did, pay all Court costs, investigation costs, costs of doctors' examinations, expert witness' fees, transcript costs and the costs of printing briefs on appeal out of the twenty-five per cent fee. Such agreement was considered to be objectionable and was abrogated. As a result, Legal Counsel are not subject to suggestion or compulsion by the Brotherhood as to the fees and expenses charged their clients who are Brotherhood members.

E. Throughout the years, an unauthorized practice had developed by which some Regional Investigators carried blank copies of contracts employing the Regional Counsel as an attorney. Whether this actually took place in Virginia has not been confirmed by the Brotherhood; however, such practice has been deemed objectionable and has been eliminated.

F. A practice had developed in some instances in the Legal Aid Department whereby Regional Counsel were notified of those injuries and deaths of members which occurred in railroad service when such information was reported to the Legal Aid Department. This practice of notification to Regional Counsel was deemed objectionable and that department and its successor, the Department of Legal Counsel, no longer notifies Counsel of any reports received by it.

> The method and means by which Brotherhood investigations are made available to the injured member, or to the family of the deceased member.

The investigation made by the Brotherhood is forwarded by mail to the Department of Legal Counsel, located in Cleveland, Ohio. The only means by which the injured member or the family of the deceased member can obtain the investigation is by a letter to the Department requesting the same. Copies of the original reports, photographs, or statements of witnesses are sent to the injured member, or to the family of the deceased member, by mail. If a

photograph or signed statement is required for the trial [fol. 32] of a case brought by a member or by his personal representative, special arrangements may be made to obtain the originals for that purpose. Said originals must be returned to the Department of Legal Counsel when the trial is completed.

Brotherhood of Railroad Trainmen, By: Beecher E. Stallard, 1223-29 Cen. Natl. Bank Bldg., Richmond, Virginia.

Certificate of service (omitted in printing).

[fol. 33] [File endorsement omitted]

[fol. 42]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

[Title omitted]

EXCERPTS FROM ANSWER OF DEFENDANT, BROTHERHOOD OF RAILROAD TRAINMEN TO REQUEST FOR DOCUMENTS AND OTHER INFORMATION—Filed May 11, 1960

* * * * * * *

9. The Brotherhood has no records in its office of agreement with Regional Counsel or Legal Counsel in Virginia.

* * * * * * *

[fol. 44] 17. There were no such contributions made per case.

Prior to April 1, 1959, Regional Counsel made contribution to Legal Aid Department solely to reimburse the Department for actual operating expenses and during the preceding five years the following amounts were paid to the Legal Aid Department, based on the amount of business done for the year.

(a) 1959—none; 1958—$1,020.00; 1957—$2,076.00; 1956—$5,028.00; 1955—$1,821.00 and 1954—not available.

No amount has been contributed or will be contributed after April 1, 1959.

* * * * * * *

[fol. 46] C. R. Maher. (See affidavit next page.)

Beecher E. Stallard, p.d., 1223-29 Central Natl. Bank Bldg., Richmond, Virginia.

[fol. 47]
STATE OF OHIO,
CUYAHOGA COUNTY, ss.:

C. R. Maher, Chief Clerk to the President, for and on behalf of the Brotherhood of Railroad Trainmen, one of the defendants named in the above styled suit, being first duly sworn, deposes and says that the facts and allegations contained herein are true, except so far as they are therein stated to be on information, and that so far as they are therein so stated, I believe them to be true.

C. R. MAHER, Affiant.

Subscribed and sworn to before me this 5th day of May, 1960.

ALBERTA M. BLUM, Notary Public.

Alberta M. Blum, Notary Public. My Commission Expires Nov. 2, 1962.

[SEAL]

[fol. 48] [File endorsement omitted]

[fol. 49]
IN THE CHANCERY COURT OF THE CITY OF RICHMOND

[Title omitted]

EXCERPT FROM SUPPLEMENTAL ANSWER OF DEFENDANT BROTHERHOOD OF RAILROAD TRAINMEN TO REQUEST FOR DOCUMENTS AND OTHER INFORMATION—September 13, 1960

By way of explanation, the Brotherhood wishes to add the following:

* * * * * * *

2. In Paragraph marked 17, the next to the last line, before the word "amount" add the word "total." At the end of the sentence add "in all states by Bernard M. Savage."

* * * * * * *

Brotherhood of Railroad Trainmen, By: Beecher E. Stallard, 1223-29 Cen. Natl. Bank Bldg., Richmond, Virginia.

[fol. 72]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

[Title omitted]

EXCERPTS FROM ANSWER BY W. P. KENNEDY, PRESIDENT OF THE BROTHERHOOD OF RAILROAD TRAINMEN TO REQUEST NUMBERS 2, 3, 5, 8 and 9 of "REQUEST FOR FURTHER PARTICULARS BY COMPLAINANT"—January 14, 1961

Now comes W. P. Kennedy, President of the Brotherhood of Railroad Trainmen and in answer to specific requests contained in "Request for Further Particulars by Complainant" answers and says:

1. Request number 2:

Verbal instructions relating to the redesignation of the "Legal Aid Department" were given by me at a meeting of all Legal Counsel on March 25, 1959, at the Hotel Jefferson, St. Louis, Missouri, at which meeting Chief Clerk C. R. Maher was also present. The said instructions were given to all present and constituted of an announcement that I, as President of the Brotherhood of Railroad Trainmen, had abolished the "Legal Aid Department" and had established a "Department of Legal Counsel" in its place. I further instructed those present that Brotherhood Counsel were to comply fully and completely with the decision of the Supreme Court of Illinois entitled *In Re Brotherhood of Railroad Trainmen, 13 Ill. 2d 391*, 150 N.E. 2d 163, [fol. 73] and that the Brotherhood would also comply with that decision. The purpose of the giving of the said instructions was informational and I informed all present that they were to govern themselves in accordance with the said instructions.

2. Request number 3:

At the same meeting, I verbally instructed those present that I had abolished the title of Regional Counsel and had established the title of Legal Counsel. I further instructed those present that I had redesignated the title of all attorneys holding appointments as Regional Counsel to Legal Counsel.

I also informed the meeting that as such Legal Counsel, the attorneys were to represent the Brotherhood as an entity in all legal work affecting the Brotherhood in their respective territories. This was done in order to change the previous practice whereby in some instances attorneys other than Regional Counsel represented the Brotherhood of Railroad Trainmen in a small percentage of the matters affecting the Brotherhood as an entity.

Since that announcement, I, at various times and places, have informed all Grand Lodge Officers and many General Chairman and local lodge officers that they are to obtain legal advice and legal services in matters involving the Brotherhood solely from the Legal Counsel in their area.

3. Request number 5:

I appointed Bernard M. Savage and Lewis & Lewis as Legal Counsel on March 25, 1959, at the said meeting of all Counsel in St. Louis, Missouri. The appointments were verbal and their duration is subject to the will of the President of the Brotherhood of Railroad Trainmen.

• • • • • • •

[fol. 87]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

[Title omitted]

AMENDMENT TO ANSWER OF RESPONDENT, BROTHERHOOD OF RAILROAD TRAINMEN—Filed April 10, 1961

Amended Answer of Brotherhood of Railroad Trainmen to a Bill of Complaint exhibited against it in the Chancery Court of the City of Richmond, Virginia, by Commonwealth of Virginia, ex rel. Virginia State Bar.

The Respondent by way of amendment and supplement to its original Answer in this cause, says that heretofore it filed its answer in this court, and ask that it be taken and read in connection with this, its amended and supplemental answer to the same extent and with the same effect as if the same were herein set forth; for Answer to the Bill of

Complaint exhibited against it, the Respondent adds Paragraph (c) to Paragraph 9, beginning immediately after paragraph marked (b), to read as follows:

9(c) The Respondent, Brotherhood of Railroad Trainmen, alleges that it has the legal right to assist any of its injured members by making available to them or their family, the information gathered as a result of its investigation and that in addition it has the right to advise injured members to consult or employ attorneys and doctors for the purpose of protecting their rights, and further alleges that these rights are guaranteed to it by the Virginia Bill of Rights (Virginia Constitution Section 12) and secured by the 1st Amendment to the Constitution of the United States and guaranteed by the 14th Amendment to the Federal Constitution.

[fol. 88] Wherefore, Respondent, therefore, prays that it may file its amended and supplemental answer and that the bill of complaint exhibited against it be dismissed for the reason that the issues raised by the bill of complaint are moot and insufficient for want of equity.

Brotherhood of Railroad Trainmen, By: Beecher E. Stallard, 1223-29, Cen. Natl. Bank Bldg., Richmond, Virginia.

Certificate of Service (omitted in printing).

[fol. 89] [File endorsement omitted]

[fol. 119]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

[Title omitted]

MOTION TO STRIKE THE TESTIMONY OF LAWRENCE EDWARD TROXTELL AND VIRGINIA LEE TROXTELL—Filed January 23, 1962

To the Honorable Brockenbrough Lamb, Judge of Said Court:

The defendant, Brotherhood, moves the Court to strike out the testimony introduced by the plaintiff through Law-

rence Edward Troxtell and Virginia Lee Troxtell, and any exhibits filed therewith as evidence, for the following reasons:

1. The testimony of the witnesses to incidents taking place in the State of Indiana is not relevant to prove the allegations of the bill of complaint, namely that the practices of defendant Brotherhood constitute the unauthorized practice of law in the Commonwealth of Virginia and the City of Richmond, and therefore, should be restrained by the Court.

2. If the defendant Brotherhood were guilty of the unauthorized practice of law in the State of Indiana (and defendant does not know what practices constitute the unauthorized practice of law in Indiana State) where the incident described by the witnesses, took place, this court does not have jurisdiction to enforce its decree in the State of Indiana.

3. If the incidents described by the witnesses had taken place in the Commonwealth of Virginia they would not be sufficient to prove that defendant Brotherhood was guilty of the unauthorized practice of law in the Commonwealth of Virginia. The defendant Brotherhood would have had a constitutional right, both state and Federal, to do the acts described by the witnesses.

4. The testimony does not prove that defendant Brotherhood is now carrying on in Virginia the practices as described by the witnesses.

[fol. 120] 5. The exhibit filed with the testimony is a written statement taken by a representative of either the Association of American Railroads or a local railroad. The exhibit could be used by the witness if it were made by him to refresh his memory when testifying, if he made the statement in question. It is not proper evidence in this case and should be excluded.

Brotherhood of Railroad Trainmen, By: Beecher E. Stallard, 1223-29 Cen. Natl. Bank Bldg., Richmond, Virginia.

Certificate of service (omitted in printing).

[fol. 121] [File endorsement omitted]

[fol. 122]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

[Title omitted]

MOTION TO STRIKE THE TESTIMONY OF ELMO S. LOMAN AND GLORIA M. LOMAN—Filed January 23, 1962

To the Honorable Brockenbrough Lamb, Judge of Said Court:

The defendant Brotherhood moves the Court to strike out the testimony introduced by the plaintiff through Elmo S. Loman and Gloria M. Loman, and any exhibits filed therewith as evidence, for the following reasons:

1. The testimony of the witnesses to incidents taking place in the State of California is not relevant to prove the allegations of the bill of complaint, namely that the practices of defendant Brotherhood constitute the unauthorized practice of law in the Commonwealth of Virginia and the City of Richmond, and therefore, should be restrained by the Court.

2. If the defendant Brotherhood were guilty of the unauthorized practice of law in the State of California (and defendant does not know what practices constitute the unauthorized practice of law in California State) where the incident described by the witnesses took place, this Court does not have jurisdiction to enforce its decree in the State of California.

3. If the incidents described by the witnesses had taken place in the Commonwealth of Virginia they would not be sufficient to prove that defendant Brotherhood was guilty of the unauthorized practice of law in the Commonwealth of Virginia. The defendant Brotherhood would have had a constitutional right, both state and Federal, to do the acts described by the witnesses.

[fol. 123] 4. The testimony does not prove that defendant Brotherhood is now carrying on in Virginia the practices as described by the witnesses.

5. The exhibit filed with the testimony is a written statement taken by a representative of either the Association of American Railroads or a local railroad. The exhibit could be used by the witness if it were made by him to refresh his memory when testifying, if he made the statement in question. It is not proper evidence in this case and should be excluded.

Brotherhood of Railroad Trainmen, By Beecher E. Stallard, 1223-29 Cen. Natl. Bank Bldg., Richmond, Virginia.

Certificate of service (omitted in printing).

[fol. 124] [File endorsement omitted]

[fol. 125]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

[Title omitted]

MOTION TO STRIKE THE TESTIMONY OF KENNETH H. GIBSON—Filed January 23, 1962

To the Honorable Brockenbrough Lamb, Judge of Said Court:

The defendant Brotherhood moves the Court to strike out the testimony introduced by the plaintiff through Kenneth H. Gibson and any exhibits filed therewith as evidence, for the following reasons:

1. The testimony of the witness to incidents taking place in the State of Iowa is not relevant to prove the allegations of the bill of complaint, namely that the practices of defendant Brotherhood constitute the unauthorized practice of law in the Commonwealth of Virginia and the City of Richmond, and therefore, should be restrained by the Court.

2. If the defendant Brotherhood were guilty of the unauthorized practice of law in the State of Iowa (and defendant does not know what practices constitute the unauthorized practice of law in Iowa State) where the incident described by the witness took place, this Court

does not have jurisdiction to enforce its decree in the State of Iowa.

3. If the incidents described by the witness had taken place in the Commonwealth of Virginia they would not be sufficient to prove that defendant Brotherhood was guilty of the unauthorized practice of law in the Commonwealth of Virginia. The defendant Brotherhood would have had a constitutional right, both state and Federal, to do the acts described by the witness.

[fol. 126] 4. The testimony does not prove that defendant Brotherhood is now carrying on in Virginia the practices as described by the witness.

5. The exhibit filed with the testimony is a written statement taken by a repre tative of either the Association of American Railroads or .. local railroad. The exhibit could be used by the witness if it were made by him to refresh his memory when testifying, if he made the statement in question. It is not proper evidence in this case and should be excluded.

Brotherhood of Railroad Trainmen, By: Beecher E. Stallard, 1223-29 Cen. Natl. Bank Bldg., Richmond, Virginia.

Certificate of service (omitted in printing).

[fol. 127] [File endorsement omitted]

[fol. 128]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

[Title omitted]

MOTION TO STRIKE THE TESTIMONY OF CHARLES WILLIAM CLARK, JR.—Filed January 23, 1962

To the Honorable Brockenbrough Lamb, Judge of Said Court:

The defendant Brotherhood moves the Court to strik out the testimony introduced by the plaintiff through Charles William Clark, Jr., and any exhibits filed therewith as evidence, for the following reasons:

1. The testimony of the witness to incidents taking place in the State of Pennsylvania is not relevant to prove the allegations of the bill of complaint, namely that the practices of defendant Brotherhood constitute the unauthorized practice of law in the Commonwealth of Virginia and the City of Richmond, and therefore, should be restrained by the Court.

2. If the defendant Brotherhood were guilty of the unauthorized practice of law in the State of Pennsylvania (and the defendant does not know what practices constitute the unauthorized practice of law in Pennsylvania State) where the incident described by the witness took place, this Court does not have jurisdiction to enforce its decree in the State of Pennsylvania.

3. If the incidents described by the witness had taken place in the Commonwealth of Virginia they would not be sufficient to prove that defendant Brotherhood was guilty of the unauthorized practice of law in the Commonwealth of Virginia. The defendant Brotherhood would have had a constitutional right, both state and Federal, to do the acts described by the witness.

[fol. 129] 4. The testimony does not prove that defendant Brotherhood is now carrying on in Virginia the practices as described by the witness.

5. The exhibit filed with the testimony is a written statement taken by a representative of either the Association of American Railroads or a local railroad. The exhibit could be used by the witness if it were made by him to refresh his memory when testifying, if he made the statement in question. It is not proper evidence in this case and should be excluded.

Brotherhood of Railroad Trainmen, By: Beecher E. Stallard, 1223-29 Cen. Natl. Bank Bldg., Richmond, Virginia.

Certificate of service (omitted in printing).

[fol. 130] [File endorsement omitted]

[fol. 135]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

[Title omitted]

MOTION TO STRIKE THE TESTIMONY OF DEWEY C. McLAUGHLIN—Filed January 23, 1962

To the Honorable Brockenbrough Lamb, Judge of Said Court:

The defendant Brotherhood, moves the Court to strike out the testimony introduced by the plaintiff through Dewey C. McLaughlin and any exhibits filed therewith as evidence, for the following reasons:

1. The testimony of the witness to incidents taking place in the State of Ohio is not relevant to prove the allegations of the bill of complaint, namely that the practices of defendant Brotherhood constitute the unauthorized practice of law in the Commonwealth of Virginia and the City of Richmond, and therefore, should be restrained by the Court.

2. If the defendant Brotherhood were guilty of the unauthorized practice of law in the State of Ohio (and defendant does not know what practices constitute the unauthorized practice of law in Ohio State) where the incident described by the witness took place, this Court does not have jurisdiction to enforce its decree in the State of Ohio.

3. If the incidents described by the witness had taken place in the Commonwealth of Virginia they would not be sufficient to prove that defendant Brotherhood was guilty of the unauthorized practice of law in the Commonwealth of Virginia. The defendant Brotherhood would have had a constitutional right, both state and Federal, to do the acts described by the witness.

[fol. 136] 4. The testimony does not prove that defendant Brotherhood is now carrying on in Virginia the practices as described by the witness.

5. The exhibit filed with the testimony is a written statement taken by a representative of either the American

Association of Railroads or a local railroad. The exhibit could be used by the witness if it were made by him to refresh his memory when testifying, if he made the statement in question. It is not proper evidence in this case and should be excluded.

Brotherhood of Railroad Trainmen, By: Beecher E. Stallard, 1223-29 Cen. Natl. Bank Bldg., Richmond, Virginia.

Certificate of service (omitted in printing).

[fol. 137] [File endorsement omitted]

[fol. 138]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

[Title omitted]

MOTION TO STRIKE THE TESTIMONY OF CLIFFORD D. OLSON AND BETTY OLSON—Filed January 23, 1962.

To the Honorable Brockenbrough Lamb, Judge of Said Court:

The defendant Brotherhood, moves the Court to strike out the testimony introduced by the plaintiff through Clifford D. Olson and Betty Olson, and any exhibits filed therewith as evidence, for the following reasons:

1. The testimony of the witnesses to incidents taking place in the state of South Dakota is not relevant to prove the allegations of the bill of complaint, namely that the practices of defendant Brotherhood constitute the unauthorized practice of law in the Commonwealth of Virginia and the City of Richmond, and therefore, should be restrained by the Court.

2. If the defendant Brotherhood were guilty of the unauthorized practice of law in the State of South Dakota (and defendant does not know what practices constitute the unauthorized practice of law in South Dakota State) where the incident described by the witnesses, took place, this Court does not have jurisdiction to enforce its decree in the State of South Dakota.

3. If the incidents described by the witnesses had taken place in the Commonwealth of Virginia they would not be sufficient to prove that defendant Brotherhood was guilty of the unauthorized practice of law in the Commonwealth of Virginia. The defendant Brotherhood would have had a constitutional right, both state and Federal, to do the acts described by the witnesses.

[fol. 139] 4. The testimony does not prove that defendant Brotherhood is now carrying on in Virginia the practices as described by the witnesses.

5. The exhibit filed with the testimony is a written statement taken by a representative of either the Association of American Railroads or a local railroad. The exhibit could be used by the witness if it were made by him to refresh his memory when testifying, if he made the statement in question. It is not proper evidence in this case and should be excluded.

Brotherhood of Railroad Trainmen, By: Beecher E. Stallard, 1223-29 Cen. Natl. Bank Bldg., Richmond, Virginia.

Certificate of service (omitted in printing).

[fol. 140] [File endorsement omitted]

[fol. 141]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

[Title omitted]

MOTION TO STRIKE THE TESTIMONY OF PAUL A. HODGES—Filed January 23, 1962

To the Honorable Brockenbrough Lamb, Judge of Said Court:

The defendant Brotherhood moves the Court to strike out the testimony introduced by the plaintiff through Paul A. Hodges for the following reasons:

1. The testimony of the witness to incidents taking place in the State of Illinois is not relevant to prove the allegations of the bill of complaint, namely that the practices of defendant Brotherhood constitute the unauthorized prac-

tice of law in the Commonwealth of Virginia and the City of Richmond, and therefore, should be restrained by the Court.

2. If the defendant Brotherhood were guilty of the unauthorized practice of law in the State of Illinois (and the defendant does not know what practices constitute the unauthorized practice of law in Illinois State) where the incident described by the witness took place, this Court does not have jurisdiction to enforce its decree in the State of Illinois.

3. If the incidents described by the witness had taken place in the Commonwealth of Virginia they would not be sufficient to prove that defendant Brotherhood was guilty of the unauthorized practice of law in the Commonwealth of Virginia. The defendant Brotherhood would have had a constitutional right, both state and Federal, to do the acts described by the witness.

[fol. 142] 4. The testimony does not prove that defendant Brotherhood is now carrying on in Virginia the practices as described by the witness. It is not proper evidence in this case and should be excluded.

Brotherhood of Railroad Trainmen, By: Beecher E. Stallard, 1223-29 Cen. Natl. Bank Bldg., Richmond, Virginia.

Certificate of service (omitted in printing).

[fol. 143] [File endorsement omitted]

[fol. 144],

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

[Title omitted]

MOTION TO DISMISS—Filed January 23, 1962

The Defendant Brotherhood moves the Court to strike the evidence of Plaintiff in this case on the ground that the Plaintiff has not proved that the Brotherhood is engaged in any unlawful practice or is engaged in the unauthorized practice of law in the Commonwealth of Virginia at the present time, nor has the Plaintiff proved that the

Brotherhood was engaged in any unlawful practice or in the unauthorized practice of law in the Commonwealth of Virginia at the time of the institution of this case, which was on June 29, 1959.

GROUND FOR SAID MOTION

1. The evidence shows that prior to April, 1959, the Defendant Brotherhood eliminated practices which Plaintiff alleged it was engaged in in the Commonwealth of Virginia, and which Plaintiff alleged constituted the unauthorized practice of law.

2. The practices in which the Defendant Brotherhood is now engaged in the Commonwealth of Virginia do not constitute the practice of law and Defendant has the legal right to make available to its member or their families, any information gathered as a result of its investigation, and in addition it has the right, and members of local lodges affiliated with it, has the right to inform members to consult or employ attorneys and doctors for the purpose of protecting their rights, and states that these rights are guaranteed to it and to members of local lodges by the Virginia Bill of Rights (Virginia Constitution 12) and secured by the 1st Amendment to the Constitution of the United States and guaranteed by the 14th Amendment to the Federal Constitution.

[fol. 145] 3. The evidence does not prove that the Defendant Brotherhood is now or has ever been guilty of the practice of law in the Commonwealth of Virginia, under the rules defining the practice of law.

4. An injunction is a preventative remedy and where the evidence shows that the Defendant Brotherhood has ceased committing the acts complained of, an injunction should be refused. (See Barton's Chan. Prac. 3d, page 603, Akers v. Mathieson, 151 Va. 1, Kwass v. Kersey, 139 W. Va. 497, commented on in 57 W. Va. Law. Rev. 101.)

Beecher E. Stallard, Counsel for the Brotherhood.

Certificate of service (omitted in printing).

[fol. 146] [File endorsement omitted]

[fol. 147]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

[Title omitted]

ORDER OVERRULING MOTIONS TO STRIKE—
Entered January 23, 1962

This day came again the complainant and the defendant, Brotherhood of Railroad Trainmen, by counsel, and the said defendant presented its separate written motions (1) to strike exhibits filed with the testimony of William P. Kennedy, (2) to strike the testimony of Dewey C. McLaughlin, (3) to strike the testimony of Clifford D. Olson and Bette Olson, (4) to strike the testimony of Paul A. Hodges, (5) to strike the testimony of Charles William Clarke, Jr., (6) to strike the testimony of Kenneth H. Gibson, (7) to strike the testimony of Elmo S. Loman and Gloria M. Loman (8) to strike the testimony of Lawrence Edward Troxtell and Virginia Lee Troxtell, and (9) to strike all the evidence of the complainant and dismiss its suit, which said motions are hereby Ordered filed in this cause and were argued by counsel. On consideration whereof, each of said motions is overruled and denied to which action of the Court the said defendant excepted.

Thereupon, the said defendant further moved the Court for leave to file in evidence in this cause photocopies of two certain letters, one dated April 3, 1961, from Douglas W. Matthews to The Solicitor of the City Court of Cedartown, Cedartown, Georgia, and the other dated October 12, 1961, [fol. 148] from T. J. Lewis, Jr. to Mr. W. E. B. Chase, c/o Mr. Beecher Stallard, Central National Bank Building, Richmond, Virginia, and to strike from the evidence in this cause the testimony heretofore given by Mrs. Betty Ann Queen Doeg on October 10, 1961, to which the complainant objected on the grounds that the letters were not the best evidence of the matters therein set forth, that the writers thereof were not subject to cross-examination and that if admitted the complainant would be obliged to move the Court for leave to bring before the Court in person or by deposition the individuals referred to in said letters and such others as may be required to show to the Court that the matters therein set forth are not truly and cor-

rectly stated. Upon consideration whereof the motions to file the said letters and to strike the evidence of Mrs. Doeg are overruled and denied, to which the said defendant excepted.

I ask for this:

Beecher E. Stallard, Central National Bank Building, Richmond 19, Virginia, Counsel for the Defendant, Brotherhood of Railroad Trainmen.

Seen:

Aubrey R. Bowles, III, 901 Mutual Building, Richmond 19, Virgina, Counsel for the Complainant.

[fol. 149] [File endorsement omitted]

[fol. 150]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA, ex rel.,
VIRGINIA STATE BAR, Complainant,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, et als., Defendants.

FINAL DECREE AWARDING INJUNCTION—
Entered January 29, 1962

This cause came on this day to be finally heard upon the papers formerly read; upon the exhibits filed; upon the depositions filed; upon the transcript of the evidence heard orally in open court, authenticated by the judge and now made a part of the record; and was argued by counsel.

Upon consideration whereof the court finds the following facts:

The defendant Brotherhood in 1930 adopted a plan designed to make available to its members, and the families of its deceased members, the professional services of attorneys selected by the Brotherhood to represent them in claims for personal injury or death arising out of railroad service.

In order to implement this plan the Brotherhood established at its Grand Lodge a "Legal Aid Department" (re-

named on January 1, 1959, "Department of Legal Counsel"), divided the United States into Regions, and entered into agreements with certain attorneys at law selected by the Brotherhood in each Region, called Regional Counsel (on and after January 1, 1959, called Legal Counsel).

The defendant Brotherhood assigned one or more "Regional Investigators" to each such counsel, who were paid by the Brotherhood.

[fol. 151] The operation of this plan has from its inception resulted, and still results, in channeling all, or substantially all, claims for personal injury to, or death of, members into the hands of such Regional (or Legal) Counsel.

In furtherance of the plan the defendant Brotherhood has advised, and continues to advise, its members and the families of deceased members with respect to the legal aspects of their claims; has held out, and continues to hold out, Regional (or Legal) Counsel as the only lawyers approved by the Brotherhood to aid its members and their families; has controlled, and continues to control, directly or indirectly, the fees to be charged by such counsel to its members and their families; has furnished to such counsel prompt notice of the injury or death of a member in railroad service for the purpose of aiding such counsel in obtaining legal employment by its members and their families; has solicited, and continues to solicit, the handling of such claims by such counsel; has paid the salaries of the Regional Investigators (whose chief function is to solicit legal employment of such counsel to prosecute such claims), has advised. and continues to advise, members and the families of deceased members that the Regional (or Legal) Counsel will defray expenses and make advances during the pendency of claims; has accepted, both directly and indirectly, a share of the counsel's fees; and has countenanced the sharing of the fees of such counsel by the Regional Investigators and others who procure legal employment for such counsel.

Various courts throughout the several States in which the practices of the defendant Brotherhood have been subjected to inquiry have reached similar findings of facts and have enjoined the continuance of such practices by

the defendant Brotherhood and its Regional (Legal) Counsel.

[fol. 152] The defendant Brotherhood has made protestations on occasions prior to April 1, 1959, that it would discontinue the objectionable aspects of the plan and has from time to time made protestations that it has done so; yet it is admitted in the Brotherhood's answer that these practices continued up to April 1, 1959.

The court finds that the defendant Brotherhood still adheres to the pattern and design of the plan formulated and implemented in 1930.

And the court finds that there is reasonable ground for apprehension that this plan and course of conduct will, in furtherance of the defendant Brotherhood's avowed purpose, be adopted and put into effect in the City of Richmond, within the jurisdiction of this court.

Wherefore, the court doth Adjudge, Order and Decree that the Brotherhood of Railroad Trainmen, its officers, agents, servants and employees, and its members acting in its behalf; be, and they are now, enjoined from in any manner, directly or indirectly, engaging in the practices aforesaid in the Commonwealth of Virginia; and, in particular, from giving or furnishing legal advice to its members or their families; from holding out lawyers selected by it as the only approved lawyers to aid the members or their families; from informing any lawyer that an accident has occurred and furnishing the name and address of an injured or deceased member for the purpose of obtaining legal employment for such lawyer, or in any other manner soliciting or encouraging such legal employment of the selected lawyers; from stating or suggesting that such selected lawyers will defray expenses and make advances to clients pending settlement of claims; from controlling, directly or indirectly, fees charged or to be charged [fol. 153] by any lawyer; from making compensation for the solicitation of legal employment for any lawyer, whether by way of salary, commission or otherwise; from in any manner sharing in the legal fees of any lawyer, or countenancing the splitting of such fees with any layman or lay agency; and from doing any act or combination of acts, and from formulating and putting into practice any

plan, pattern or design, the result of which is to channel legal employment to any particular lawyer or group of lawyers; and, in general, from violating the laws governing the practice of law in the Commonwealth of Virginia.

It is further Ordered that the complainant recover of the defendant Brotherhood its costs in this suit as taxed by the clerk.

The complainant being a person from whom, in the opinion of the court, it would be improper to require bond, the court requires no injunction bond and this injunction is in force immediately.

The Brotherhood of Railroad Trainmen will be put upon notice of the provisions of this decree by acceptance of service of an attested copy by its counsel of record in this suit and in conformity with the request of counsel for the complainant it is further Ordered that a certified copy of this decree be served on the secretary of each subordinate lodge of the defendant Brotherhood in the Commonwealth of Virginia.

To all of the provisions of this decree the defendant objected and excepted.

The objects for which this suit was instituted having been fully accomplished, it is Ordered that the cause be stricken from the docket and the papers placed amongst the ended causes, properly indexed, with leave [fol. 154] reserved to any party to have the suit reinstated for good cause shown and after such notice as the court may require.

We ask for this:

Aubrey R. Bowles, Jr.; Aubrey R. Bowles, III, 901 Mutual Building, Richmond 19, Virginia, Attorneys for the Complainant.

Seen and object:

Beecher E. Stallard, Central National Bank Building, Richmond, Virginia, Attorney for the Defendant, Brotherhood of Railroad Trainmen.

[fol. 155] [File endorsement omitted]

[fol. 164]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

[Title omitted]

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR OF DEFENDANT BROTHERHOOD OF RAILROAD TRAINMEN—Filed March 7, 1962

The Defendant Brotherhood of Railroad Trainmen, gives Notice of Appeal from a Final Decree Awarding an Injunction, by the Court herein on January 29, 1962, and assigns the following errors as required by Rule 5:1 §4 of the Supreme Court of Appeals of Virginia:

1. The Court erred in overruling the written motion of Defendant Brotherhood at the conclusion of all the evidence to strike the evidence of Complainant and to dismiss bill of complaint, and further erred in its failure to rule that the Brotherhood had a right to inform its members to consult or employ attorneys and that this right was guaranteed to the Brotherhood and to its members by Section 12 of the Constitution of Virginia, and secured by the First Amendment of the United States Constitution, and guaranteed by the Fourteenth Amendment of said Constitution.

2. The Court erred in awarding an injunction against the Defendant Brotherhood over its objections and exceptions.

3. The Court erred in its findings of fact against the Defendant Brotherhood in the following:

[fol. 165] (a) In order to implement this plan the Brotherhood established at its Grand Lodge a "Legal Aid Department" (renamed on January 1, 1959, "Department of Legal Counsel") divided the United States into regions and entered into agreements with certain attorneys at law, selected by the Brotherhood in each region, called Regional Counsel (on and after January 1, 1959, called Legal Counsel);

(b) The Defendant Brotherhood assigned one or more "Regional Investigators" to each such counsel, who were paid by the Brotherhood;

(c) The operation of this plan has from its inception resulted, and still results, in channeling all, or substantially all, claims for personal injury to or death of members into the hands of such Regional (or Legal) Counsel;

(d) In furtherance of the plan the Defendant Brotherhood has advised, and continues to advise, its members [fol. 166] and the families of deceased members with respect to the legal aspects of their claims;

(e) has held out, and continues to hold out, Regional (or Legal) Counsel as the only lawyers approved by the Brotherhood to aid its members and their families;

(f) has controlled, and continues to control, directly or indirectly, the fees to be charged by such counsel to its members and their families;

(g) has furnished to such counsel prompt notice of the injury or death of a member in railroad service for the purpose of aiding such counsel in obtaining legal employment by its members and their families;

(h) has solicited, and continues to solicit, the handling of such claims by such counsel;

(i) has paid the salaries of the Regional Investigators (whose chief function is to solicit legal employment of such counsel to prosecute such claims);

[fol. 167] (j) has advised, and continues to advise, members and the families of deceased members that the Regional (or Legal) Counsel will defray expenses and make advances during the pendency of claims;

(k) has accepted, both directly and indirectly, a share of the counsel's fees;

(l) and has countenanced the sharing of the fees of such counsel by the Regional Investigators and others who procure legal employment for such counsel;

(m) Various courts throughout the several States in which the practices of the defendant Brotherhood have been subjected to inquiry have reached similar find-

ings of facts and have enjoined the continuance of such practices by the defendant Brotherhood and its Regional (or Legal) Counsel;

(n) The defendant Brotherhood has made protestations on occasions prior to April 1, 1959, that it would discontinue the objectionable aspects of the plan and has from time to time made protestations that it has done so; yet it is admitted in the Brotherhood's answer [fol. 168] that these practices continued up to April 1, 1959;

(o) The court finds that the Defendant Brotherhood still adheres to the pattern and design of the plan formulated and implemented in 1930;

(p) The court finds that there is reasonable grounds for apprehension that this plan and course of conduct will, in the furtherance of Defendant Brotherhood's avowed purpose, be adopted and put into effect in the City of Richmond, within the jurisdiction of this court.

4. The Court erred in enjoining the Defendant Brotherhood, its officers, agents, servants and employees, and its members acting in its behalf:

(a) From in any manner, directly or indirectly, engaging in the practices aforesaid in the Commonwealth of Virginia;

(b) from giving or furnishing legal advice to its members or their families;

(c) from holding out lawyers selected by it as the only approved lawyers to aid the members of their families;

(d) from informing any lawyer that an accident has occurred and furnishing the names and addresses of a deceased member for the purpose of obtaining legal employment for such lawyer, or in any other manner [fol. 169] soliciting or encouraging such legal employment of the selected lawyers;

(e) from stating or suggesting that such selected lawyers will defray expenses and make advances to clients pending settlement of claims;

(f) from controlling, directly or indirectly, fees charged or to be charged by any lawyer;

(g) from making compensation for the solicitation of legal employment for any lawyer, whether by way of salary, commission or otherwise;

(h) from in any manner sharing in the legal fees of any lawyer, or countenancing the splitting of such fees with any layman or lay agency;

(i) from doing any act or combination of acts, and from formulating and putting into practice any plan, pattern or design, the result of which is to channel legal employment to any particular lawyer or group of lawyers;

(j) from violating the laws governing the practice of law in the Commonwealth of Virginia.

[fol. 170] 5. The Court erred in refusing to strike the testimony introduced by Complainant of the following witnesses and exhibits filed therewith:

(a) Lawrence Edward Troxtell and Virginia Lee Troxtell;

(b) Clifford D. Olson and Betty Olson;

(c) Dewey C. McLaughlin;

(d) Kenneth H. Gibson;

(e) Elmo S. Loman and Gloria M. Loman;

(f) Charles William Clark, Jr.;

(g) Paul Hodges;

(h) Mrs. Neal (Estelle) Wills; Betty Ann Queen Doeg; Mary Ann Wills and Harold Wills.

6. The Court erred in refusing to strike out the exhibits filed with the testimony of William P. Kennedy and marked as follows:

"Complainant Exhibit K-1"

"Complainant Exhibit K-2"

"Complainant Exhibit K-3"

"Complainant Exhibit K-4"

"Complainant Exhibit K-5"

"Complainant Exhibit K-6"

"Complainant Exhibit K-7"

7. The Court erred in permitting Robert A. Nelson, Assistant Attorney General for the State of Nebraska, to testify "as to the circumstances under which" he visited the Brotherhood's Office in Cleveland, Ohio, and to describe what took place in the proceedings in the Case of State, Ex rel. Beck in the State of Nebraska.

[fol. 171] The Court erred in permitting Robert A. Nelson to identify certain exhibits bearing initials (L & L) and assuming that the initials stood for Lewis & Lewis, and making certain other identifications, assumptions and deductions in his testimony and to comment upon and explain evidence which had been introduced in the case of State, ex rel. Beck in the State of Nebraska.

8. The Court erred in permitting Complainant to introduce Plaintiff's Exhibits 17, 21, 22 and 23 over Defendant's objection.

9. The Court erred in permitting Mrs. Neal Wills to testify with reference to a visit made by B. G. Byrington and Tom Lewis, Jr., to her home and to recite the conversation of Byrington and Lewis with her daughter.

10. The Court erred in permitting Complainant to introduce Byrington Exhibit A, which is a record of the case of State of Georgia v. B. G. Byrington.

11. The Court erred in permitting Complainant to introduce Plaintiff's Exhibit 78, which is a copy of a deposition of C. B. Maher, in the case of Southern Pacific Company v. Clifton Hildebrand, et al., in Superior Court, Los Angeles County, State of California.

12. The Court erred in not permitting Defendant Brotherhood to file in evidence letter dated April 3, 1961, from Douglas W. Matthews, to the solicitor of the City Court of Cedartown, Georgia, and another letter dated October 12, 1961, from T. J. Lewis, Jr. to W. E. B. Chase, c/o Beecher E. Stallard, and to strike from the evidence the testimony given by Mrs. Betty Ann Queens Doeg on October 10, 1961.

13. The Court erred when it permitted Complainant to introduce a photostat copy of a letter purportedly mailed to [fol. 172] certain affiliated lodges of the Defendant Brotherhood by its President W. P. Kennedy, after both Complainant and Defendant had completed the taking of all evidence weeks prior thereto, and had rested their case.

Brotherhood of Railroad Trainmen, By: Beecher E. Stallard, 1223-29 Cen. Natl. Bank Bldg., Richmond, Virginia.

Certificate of service (omitted in printing).

[fol. 173] [File endorsement omitted]

[fol. 174]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

[Title omitted]

NOTICE OF APPEAL AND ADDITIONAL ASSIGNMENTS OF ERROR OF DEFENDANT BROTHERHOOD OF RAILROAD TRAINMEN—Filed March 29, 1962

The Defendant, Brotherhood of Railroad Trainmen, gives notice of appeal from the judgment of the court rendered herein on January 29, 1962, in addition to the Assignments of Error heretofore filed, assigns the following error, as required by Rules of the Supreme Court, 5.1(4) and marks said assignment as Paragraph 14:

14. The Court erred in entering the decree of January 29, 1962, and thereby failing to rule that the Brotherhood had the right to represent its members by virtue of the Federal Railway Labor Act (45 U.S.C.A., Sec. 151-164).

Brotherhood of Railroad Trainmen, By: Beecher E. Stallard, 1223-29 Cen. Natl. Bank Bldg., Richmond, Virginia.

Certificate of service (omitted in printing).

[fol. 175] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 177]

IN THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA
RICHMOND

ORDER REFUSING APPEAL AND SUPERSEDEAS—June 12, 1962

The petition of Brotherhood of Railroad Trainmen for an appeal and supersedeas from a decree entered by the Chancery Court of the City of Richmond on the 29th day of January, 1962, in a certain chancery cause then therein depending, wherein Commonwealth of Virginia, ex rel., Virginia State Bar, was plaintiff and the petitioner and others were defendants, having been maturely considered and a transcript of the record of the decree aforesaid seen and inspected, the court being of opinion that the said decree is plainly right, doth reject said petition, and refuse said appeal and supersedeas, the effect of which is to affirm the decree of the said chancery court.

[fol. 177a] [File endorsement omitted]

[fol. 178]
VIRGINIA:

IN THE CHANCERY COURT OF THE CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA, ex rel.
VIRGINIA STATE BAR,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN.

ORDER DENYING PETITION FOR REHEARING

The following attested copy of an order of the Supreme Court of Appeals of Virginia was this day received and is now entered here:

Then spread Brotherhood etc. v. Com. Va.
beginning "Virginia" and ending with "Clerk"

[fol. 179]
IN THE SUPREME COURT OF APPEALS OF THE
COMMONWEALTH OF VIRGINIA
STAUNT

BROTHERHOOD OF RAILROAD TRAINMEN, Appellant,

against

COMMONWEALTH OF VIRGINIA, ex rel.
VIRGINIA STATE BAR, Appellee.

ORDER DENYING PETITION TO SET ASIDE DECREE—
August 31, 1962

Upon a Petition to Rehear

On mature consideration of the petition of the appellant to set aside the decree entered herein on the 12th day of June, 1962, and grant a rehearing thereof, the prayer of the said petition is denied.

[fol. 179a] [File endorsement omitted]

[fol. 181] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 182] [File endorsement omitted]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND, VIRGINIA

COMMONWEALTH OF VIRGINIA, ex rel., Virginia State Bar, Complainant,

v.

BROTHERHOOD OF RAILROAD TRAINMEN et al., Defendants.

Deposition of William P. Kennedy—June 1, 1961

Deposition of WILLIAM P. KENNEDY, taken as if under cross-examination, before William E. Ferris, a Notary Public within and for the State of Ohio, at the offices of Messrs. Arter, Hadden, Wykoff & Van Duzer, 1144 Union Commerce Building, Cleveland, Ohio, at 9:30 a.m. Thursday, June 1, 1961, pursuant to notice, to be read in evidence upon the trial of the above-entitled action.

APPEARANCES:

Mr. Aubrey R. Bowles, Jr., and Mr. Aubrey R. Bowles, III, For the Complainant;

Mr. Beecher E. Stallard, and Messrs. Henslee & Henslee, by Mr. E. B. Henslee, Jr., For Defendant Brotherhood of Railroad Trainmen.

[fol. 183] STIPULATION

It was stipulated by and between counsel for complainant and Defendant Brotherhood of Railroad Trainmen that all requirements of statutes with regard to the reading and signing of this deposition by the witness are waived.

WILLIAM P. KENNEDY, of lawful age, called by the complainant for the purpose of cross-examination, as provided by statute, being by me duly sworn, as hereinafter certified, deposed and said as follows:

Cross examination of William P. Kennedy.

By Mr. Bowles, Jr.:

Q. Mr. Kennedy, state your full name and address and what you do, please.

A. My name is William P. Kennedy.

Q. The "P" stands for Park?

A. Parker. I am President of the Brotherhood of Railroad Trainmen with headquarters in the Standard Building, Cleveland, Ohio.

Q. Mr. Kennedy, you have been President since, I believe, in July of 1949?

A. That is correct.

Q. When did you first become a member of the Brotherhood?

[fol. 184] A. 51 years ago.

Q. And when did you first go into lodge work?

A. 50 years ago.

Q. How long did you work actually as a trainman, about a year?

A. I worked as a trainman from 1909 until 1919.

Q. Well, have you done any actual work as a trainman since then or has it all been engaged in lodge work?

A. I have been an officer of the Brotherhood continuously since 1919.

Q. I believe you were Secretary and Treasurer of the Grand Lodge from '47 to '49?

A. That is correct.

Q. And you were Vice President of the western part of the United States from '36 to '47, I believe?

A. That is correct.

Q. And you were Chairman, General Chairman of the Milwaukee Railroad, Eastern Division, from April, 1921, until 1936?

A. That is correct.

Q. And you were Local Chairman from 1910 until 1921, I believe?

A. That is correct.

Q. And I believe, sir, that you are a member of Lodge Number 625 of Minneapolis, Minnesota, the W. P. Kennedy Lodge?

[fol. 185] A. That is correct.

Q. Since 1919, you say you have been a full time officer of the Brotherhood?

A. Yes, sir.

Q. Can you tell me, please, sir, when the Legal Aid Department was originally set up?

A. The Legal Aid Department of the Brotherhood was originally set up in 1930, I believe, would be about as close a date as we could—

Q. It was set up by the President, I believe, the then President, under the authority of Article 9 and Article 91 of your Constitution?

A. Yes, it was set up by Alexander Whitney.

Q. Article 9 relates to the powers of the President, I believe, and Article 91 relates to the powers and duties of the Secretaries of local lodges?

A. Yes, sir.

Q. And those two papers have been filed in this proceeding as Exhibit Number 1 and 2—it's the same thing, I think, but they are different editions of your Constitution—with the first and second call for documents. I think that's correct.

Mr. Stallard: That's defendant's exhibits, I believe.

Q. Under Article 91 in your Constitution there are cer-[fol. 186] tain statements made that are called rulings under Section 91, and in regard to those three portions of the Constitution that I have mentioned it is specified that the President has the power to run and does actually run and did run the Legal Aid Department and your present Department of Legal Counsel. I believe that's correct, is it not?

A. That is correct; subject to, of course, the mandates of the succeeding Conventions.

Q. From convention to convention?

A. That is correct.

Q. Yes. Now, President Kennedy—that's an interesting way to speak of you.

A. Yes, in this day and age it is.

(Discussion, off the record.)

Q. Now, the powers conferred by these references I have made to your Constitution confer on the President the authority to appoint Regional Counsel or did when you called them Regional Counsel?

A. Yes, sir.

Q. And it now confers on you the authority to appoint legal counsel since your change in April of 1959?

A. That is correct.

Q. And it also gave the President the power to appoint Regional Investigators?

A. At one time that was correct.

[fol. 187] Q. And now it confers on you the power to appoint Regional Investigators now?

A. Not necessarily Regional Investigators. I would say it gives me the power to appoint an Investigator.

Q. I think you call them now Brotherhood of Railroad Trainmen Investigators?

A. They would be out of my Central Office in Cleveland, Ohio.

Q. Yes. Now, this department as it is now called, I believe, the Department of Legal Counsel, and prior to 1959 was named the Legal Aid Department, is wholly under your control as President of the Brotherhood?

A. Yes, sir.

Q. All of these people that you appoint, the Regional Counsel, and Investigators when you appoint them, serve at your pleasure, I believe?

A. That is correct.

Q. You have the power to remove them, to appoint someone to succeed them?

A. In the course of our work in the Brotherhood of Railroad Trainmen, because of such a vast membership, we are

continuously appointing legal representatives of our Brotherhood because of the various particular cases that may arise in different sections of the country that involve us as a labor organization.

Q. I can understand that. Now, when you became Presi-
[fol. 188] dent in, I believe, 1949—

A. That is correct.

Q. —you were not bound as the incoming President to reappoint any of the persons then holding office under your Constitution?

A. Not necessarily.

Q. Now, you did continue everybody that was then in office, I believe?

A. That is correct, I did.

Q. You didn't have to, however?

A. No.

Q. And I take it that your successor will not have to reappoint the people who are now serving when you go out of office?

A. That would be his judgment at that time.

Q. It's sort of like the other President Kennedy, he can or cannot reappoint the Ambassadors?

A. Yes, I think that's the procedure in a democracy such as we enjoy.

Q. Yes, I understand. Now, I want to discuss with you, if I may, the system of the operation of the Legal Aid Department in three separate periods. The first period to which I am directing my questions is the period from the beginning of its organization in 1930 until the time that you became President in 1949. That would be the period dur-
[fol. 189] ing which President Whitney was President of the organization, I believe, is that correct?

A. That is right.

Q. In the beginning or near the beginning of the department there were certain rules and regulations that were inaugurated which have been supplied and are referred to as Exhibit 3 with the first call for documents. I think that this was the result, as I understand it, of a convention and a kind of a questionnaire or something that was sent out to all the membership and it was established with the approval and agreement of everybody.

A. After the Legal Aid Department was initiated, there were, of course, many questions asked and they were usually answered in the conventions so that everybody had an understanding as to how things were being handled.

Q. Now, these rules and regulations had to be agreed to and understood and approved by each Regional Counsel that was appointed at the time?

A. At that time, yes.

Q. Beg pardon?

A. That is correct.

Q. He had to accept them and say that he would abide by them?

A. That is correct.

Q. And the ones that have been filed here are, I think, [fol. 190] the same rules and regulations that originally were approved by Mr. Savage, I believe, in the district comprising Maryland, West Virginia, Virginia, and the District of Columbia.

A. That would be true in Mr. Savage's territory at that time.

Q. There has been filed in the proceeding so far as an Exhibit 3 (b) with the second call Mr. Savage's letter of February 6, 1937, which is his acceptance of these rules and regulations. Now, it is my understanding, sir—I am phrasing my questions this way, because I think we can save time, and if I make a misstatement, please correct me—that the fee arrangement which was in effect between Regional Counsel and the Brotherhood in representation of members of the Brotherhood for personal injury and death claims went through in this period various changes to what they were. As best I can make out, the first arrangement was a 20-percent fee. The Regional Counsel agreed that he would charge the member no more than 20 percent, and of that 5 percent was turned over to the Brotherhood in the beginning, I think. That's the plan that was set up, I think.

A. Well, I'd say we had so many attorneys that were charging the injured men such ridiculous amounts that we had a difficult time trying to find what would be a fair and

[fol. 191] reasonable amount. Some attorneys said that they would charge 20 percent and others said they wanted to charge 25 percent, and I think we eventually agreed at that time—and that was back in Mr. Whitney's administration that 25 percent was approximately a reasonable figure.

Q. Well, now, that 25 percent remained pretty nearly static so far as what the member was charged during that period, I think.

A. That remained in effect until I made a request before the Supreme Court of the State of Illinois for a clarification of what we could do and what we couldn't do.

Q. I so understand. Now, the point that I am addressing my attention to, however, is that 25 percent, the division of it between the Regional Counsel and the Brotherhood for the maintenance of the Legal Aid Department varied somewhat through that period, as I understand it?

A. It may have fluctuated a little here and there. However, when I became President I didn't feel that that type of a fee was appropriate for the occasion.

Q. I understand, sir. But, now, I gather from what has been produced here by way of documents and one thing or another that there was 20 percent retained by the Regional Counsel at one time and 5 percent of the 25, 5 percent of the whole, being one-fifth of the 25 percent, was turned over to the Brotherhood. At a later time there was [fol. 192] an arrangement, I believe, in which 20 percent was retained by counsel and the agreement of the member sent the 5 percent direct to the Brotherhood, so that it did not go through the hands of Regional Counsel?

A. There were various programs in effect prior to my administration that varied from time to time.

Q. That is the point I was trying to bring out. Now, generally speaking, is it not true that the way that actually operated, that that 25 percent fee charged to the member by Regional Counsel was prorated; nothing was done about that, but that Regional Counsel received an assessment annually based on the ratio of each individual Regional Counsel's gross take during the year to the gross of all Regional Counsel?

A. I think at that time the procedure was to charge once each year to the individual Regional Counsel a prorata

assessment in accordance with the volume of business that he produced during that particular year.

Q. That is my understanding. Now, I believe that Regional Counsel themselves were assessed to set up this department in the beginning?

A. I wouldn't say that that's correct. I would say that the Brotherhood of Railroad Trainmen set it up and later the Regional Counsel were assessed, but originally it was set up by Brotherhood funds exclusively.

[fol. 193] Q. And then later Regional Counsel baled out those funds?

A. Later.

Q. Out of that contribution?

A. That possibly was true.

Q. Now, Regional Counsel have also on occasions contributed to the expenses of the conventions in proportion to the amount of time devoted to discussing legal aid matters, I believe?

A. No, sir, that's not correct.

Q. Have they not contributed to the expense of conventions?

A. No, sir, they have not, to my knowledge.

Q. I believe in a prior deposition that you gave that you have agreed that that was a fact, I think, if I read correctly.

A. No, that wouldn't be a correct statement. The Legal Counsel for our Brotherhood are individuals that may not necessarily be involved in any way in the Legal Aid Department, and we couldn't—

Q. I am not talking about what's done now, I am talking about what was done back in this earlier period.

A. Well, over the early period we had any number of Legal Counsel in different sections of the country that had no relationship whatsoever with the Legal Aid Department. As a matter of fact, they didn't handle personal injury cases, they handled the business of the Brotherhood. They [fol. 194] handled injunctions, Federal injunctions, State injunctions, all kinds of court procedures. Those individuals had nothing whatever to do with the participation of the Legal Department of the Brotherhood.

Q. Well, what is it that you had reference to in your prior deposition about contributions based on the expenses of the convention? What is that situation?

A. Prior to my administration, I think it was a procedure that they had followed that certain costs would be allocated to Legal Aid representatives for costs of conventions.

Q. Well, that's what I had in mind. Only to the Regional Counsel.

A. But I couldn't testify a great deal to that procedure, because I knew very little about it.

Q. Now, under the Constitution, Section 91, it is the duty of the Secretary of the Local Lodge to report immediately on any accident that occurs to a member, I believe?

A. That's correct.

Q. Now, I am still talking about this period prior to the time you became President. That report was automatically then, under that system sent to Regional Counsel and to the Regional Investigators, I believe?

A. I wouldn't know exactly what the procedure was. I will say that the origination of the report in the first instance was for the purpose of gathering statistical evidence [fol. 195] for us to use before the Interstate Commerce Commission in the prevention of accidents on various railroads of the United States.

Q. Well, do you know anything about how that operated in this period prior?

A. No. No, I didn't go into detail on that.

Q. Do you know whether or not the Regional Investigators carried contracts for Regional Counsel?

A. Oh, I think they did, because when I went to the Illinois Supreme Court, I agreed that I had found that they had contracts.

Q. And you also found that there had been payments to Local Lodge members for taking people to see Regional Counsel?

A. I had found that there were discrepancies in many instances.

Q. Now, Mr. Kennedy, I want to talk about the operation of the system in the second period, which would be the

time in which you became President up until 1959, and I am somewhat at a loss to select what date in '59, whether January the 1st, April the 1st, or July the 1st, but we will get to that in a moment.

A. Yes.

Q. '59 is sufficient for the moment. Now, you made no changes in the personnel of the Legal Aid Department at [fol. 196] that time when you became President?

A. I didn't make any immediate changes. I started, however, an investigation.

Q. I believe that the Legal Aid Department had been operated, the mechanical functions of it, first by a man called a clerk, whose name was Steve Lush, I think. That was in the original.

A. Well, I would say that that's not a correct statement. It was operated by individuals long before Steve Lush ever was appointed.

Q. Well, he was not the first one?

A. No, sir.

Q. He was not in office when you became President?

A. No, he was not.

Q. Well, he was, in all events, suggested by someone named Lee, I believe. Pinky Lee, I think they called him.

A. Oh, yes. Lee.

Q. And when you became President, it was Mr. Maher?

A. Maher. Bob Maher.

Q. C. R. Maher?

A. Yes.

Q. Now, you kept the same Regional Counsel at the time when you became President?

A. For the period of time, yes.

Q. And you kept the same Regional Investigators?

[fol. 197] A. No, sir—well, I may have done that, because that would automatically go with the Counsel while I was conducting my investigation.

Q. I don't see the point of taking up the time to point out to you that in the more particulars that were furnished by the Respondent Brotherhood certain practices have been admitted in the prior period—

A. Yes.

Q. —under Paragraphs A, B, C, D, E, and F. You are familiar with what has been filed in that respect?

A. Yes.

Q. And in the answer in Paragraphs 6 and 7. And I understand that you have read those and that I think you stated on a previous occasion that Mr. Stallard was authorized to file those things and to speak for the Brotherhood on that occasion in the Virginia proceeding?

A. Yes, sir.

Q. Now, the questions which I propound to you now are related to how the system operated after 1959. What prompted this change or your idea to change it?

A. My investigation as to the operation of the so-called Legal Aid Department brought about my desire to bring about necessary changes that I felt should be made in order to keep the good name of the Brotherhood of Railroad Trainmen highly in a respectable condition.

[fol. 198] Q. I think—and I quote—Mr. Kennedy, that you have made this statement before in answer to this question. "Q. So that, at least, as of May, 1957, this was the arrangement with Regional Counsel?". And the "this" being referred to were these practices that we have referred to in the answers filed in the more particulars. And you answered, "Yes. That arrangement is what prompted me to go to the Supreme Court of Illinois."

A. Yes, sir.

Q. You have just said that your investigation revealed these matters and that you decided you would go there?

A. And I was not satisfied with the procedure that I found existing throughout the United States.

Q. Now, you went there to seek a declaratory judgment in 1955, I believe?

A. It was a unique procedure, I will have to agree on that, but I asked the Supreme Court of the State of Illinois for a clarification of what I could do and what the Brotherhood could do and what we couldn't do under the existing laws.

Q. How long had your investigation been going on?

A. About six years.

Q. From the moment that you became President?

A. From the time I became President until I started to work on the proposition of submitting this to the Supreme [fol. 199] Court of Illinois. In the first place, it took me a considerable amount of time to ascertain how I could bring about a so-called official clarification. I had in mind going to the Supreme Court of the United States. I had in mind going to some Federal Judge. I had in mind going to the Supreme Court of individual States. I finally came to the conclusion that a considerable amount of so-called Legal Aid business was handled in the State of Illinois on account of it being a centrally populated State and so I then agreed that I would ask the Supreme Court of the State of Illinois if they would not give me the clarification that I requested as to what a labor organization could do in the protection of its employees and its members and what we could not do, as I wanted to handle the matter in accordance with the legal procedure.

Q. Of course, Mr. Kennedy, we lawyers are very familiar with the procedure of declaratory judgment.

A. Yes.

Q. And you had legal advice in your investigations, I take it, in pursuing these various remedies that you might find?

A. That is correct.

Q. Who were you advised by?

A. I was advised by Mr. E. B. Henslee, my General Counsel at that time.

Q. He was General Counsel of the Grand Lodge at that [fol. 200] time, I believe?

A. Yes, sir.

Q. Was there any particular thing—

A. That's present Mr. Henslee's father, who is now deceased.

Q. I understand that. Well, was there any particular thing that precipitated the particular action that you took at the particular time?

A. Yes, there was a number of instances occurred. In the first place, I found that some of our attorneys were charging different fees. I found that outside attorneys that had no relation to the Brotherhood were charging ridiculous fees. I found out in the procedure that railroad claim agents

were using our members in the settlement of cases that were outrageous, in my opinion. I found that different groups of attorneys in different States were condemning our Brotherhood because of certain practices that we are in, and I felt that we either had to do one of two things: We either had to get some form of a clarification or I would liquidate the so-called Legal Aid Department and wipe it off the books of the Brotherhood unless I could get some court of competent jurisdiction to give me a clarification that I was looking for.

Q. Well, among those instances that you referred to, did you know at the time that the Philadelphia Bar Association [fol. 201] had complained to the Cleveland Bar Association that Mr. Edward B. Henslee, Jr., was soliciting personal injury claims in Pennsylvania in 1953?

A. That may have been possible. I wouldn't say that that's not a true statement.

Q. In 1954, was not a complaint filed against Henslee, Sr., Henslee, Jr., Monek & Murray, and the Committee under Rule 28 instituted a proceeding against those gentlemen before the Cleveland Bar Association?

Mr. Henslee: Chicago Bar.

A. I wouldn't know about the Cleveland Bar. I am not so familiar with any action taken in the State of Ohio.

Q. I beg your pardon. I meant to say the Chicago Bar.

A. Oh, you are right. You are correct, before the Chicago Bar.

Q. I am very sorry, sir. Now, then, in 1955, it was Mr. Henslee, Sr., who filed the motion for declaratory judgment in the name of the Brotherhood, as you have said, to clarify these matters?

A. Yes, sir.

Q. That was referred, I believe to a Special Master in June of 1956?

A. It was referred to—I think the Court itself referred that to a particular Judge to hear the evidence.

Q. For an investigation?

[fol. 202] A. Yes, sir.

Q. And hearings were held in that investigation, I believe?

A. Yes, sir.

Q. And on May the 23rd, 1958, the judgment came down and is recorded in 13 Ill. (2d) 391 and 150 NE (2nd) 163, and that's what we referred to, as I presume, as the Illinois decision?

A. That was the unanimous decision of the Illinois Court.

Q. Now, just about that time or shortly before that decision, the General Assembly—I don't know what you call it in Illinois, the Legislature—passed an anti-solicitation statute, did it not?

A. I think that they passed some law or rule or regulation. I wouldn't be familiar with its contents.

Q. And that was very shortly before this decision came down, I believe, wasn't it?

A. That may have been possible.

Q. Now, Mr. Kennedy, in 1949, when you became President and found out about the financial arrangements between the Legal Aid Department and the Regional Counsel, you have stated, and I quote, "brought about a correction, by canceling all or any part payment of any kind to, anybody." Now, how did you do that?

A. When the ruling came through the Illinois Supreme Court of May the 23rd, 1958, as I recall, the Court gave me [fol. 203] the opportunity of approximately a year to—

Q. Until July 1, '59, I believe.

A. —to make the decision effective.

Q. Yes.

A. I, of course, had the opportunity to review that decision, and I felt, however, that it wasn't necessary to wait for the full length of the Court's procedure to make it effective, so on April the 1st, 1959, I issued a statement to the effect that there would be no further fees of any kind charged to any individual member of the Brotherhood in the handling of a legal aid or a legal case.

Q. Well, now, how did you do that? How did you make this information available to everybody?

A. I put out a letter.

Q. Is that the letter of March 16th, I believe?

A. 1959.

Q. Yes. That has been filed—I forget just what the designation of it is right now.

Mr. Bowles, III: Exhibit 4 (j).

Q. It's already been referred to as Exhibit 4 (j) in the second further call for production of documents. Now, is that the first direction that you gave in regard to this?

A. This was the official letter to all Legal Counsel in connection with making effective the unanimous decision of the Illinois Supreme Court.

[fol. 204] Q. Well, now, that decision was rendered, I believe, on May the 23rd, 1958?

A. That is correct.

Q. And the date of that letter is March the 16th, 1959?

A. Yes, sir.

Q. Now, did you do anything in the meantime?

A. Nothing other than to investigate as to how we could handle this without going through the former procedure that the Supreme Court of Illinois said that we would be prohibited from doing.

Q. Now, Regional Counsel continued to make contributions to the Legal Aid Department throughout 1958?

A. That would be true, they did.

Q. Mr. Savage, I believe, contributed $1020 that year.

A. He may have. But he contributed nothing after April 1, 1959.

Q. '59? But he did contribute and so did everyone else during the entire year of '58?

A. Until the Illinois Supreme Court's decision was made effective, they all contributed. After that, nobody has contributed.

Q. Then everybody contributed up to July the 1st, '59?

A. No.

Q. The Supreme Court decision was effective July the 1st, '59.

[fol. 205] A. That is correct.

Q. Yes. So you said everybody contributed up until it became effective?

A. No, until we—

Q. Oh.

A. Until the Brotherhood of Railroad Trainmen made it effective, which was April 1, 1959.

Q. So that everybody did contribute up until April 1, 1959?

A. Until I made the Supreme Court's directive effective within the Brotherhood.

Q. You did not feel it necessary to anticipate that directive?

A. I didn't feel it necessary to take the full time of the Supreme Court's directive, because I cut it to April the 1st, '59, rather than to let it go through several months longer that I could have permitted it to exist.

Q. Of course, you realized on May the 23rd, 1958, that splitting of fees was improper?

A. That's correct.

Q. And you did permit it to continue until the following April the 1st, '58?

A. Because the Supreme Court permitted me to do that.

Q. In other words, you were going to allow them to do something wrong until you had to stop?

A. Not necessarily. I felt that it was a directive of [fol. 206] the Court that permitted us to continue our procedure until we could make an effective plan in accordance with the directive of the Court.

Q. I see. Now, President Whitney in his administration did pretty much the same thing in 1946, didn't he?

A. I wouldn't know what he did in '46.

Q. Are you informed of the fact that President Whitney wrote a letter to Regional Counsel on June 15, 1946, to the effect that nobody would be permitted to contribute to the Legal Aid Department thereafter?

A. No, I am not familiar with any letter.

Q. I hand you a copy of two letters. These letters were filed as DeParcq Exhibit 2 and 3 in the proceeding of Young against Gulf Mobile & Ohio Railroad in the United States District Court for the Eastern District of Missouri, Number 3957, in 1946. Both letters are dated, Cleveland 13, Ohio, General Offices, June 15, 1946. Exhibit Number 2 is addressed to Mr. William H. DeParcq, Regional Counsel, Brotherhood of Railroad Trainmen, Suite 1332, 33 North LaSalle Street, Chicago, Illinois; and Exhibit Number 3 is addressed to All Regional Counsel of Brotherhood of Railroad Trainmen. I ask you to read those, please, sir.

Have you read these, sir?

A. Yes, sir.

Q. Are you informed about this?

[fol. 207] A. No, sir.

Q. Do you know anything about it?

A. No, sir.

Q. If, Mr. Kennedy, these are correct letters, it would appear that Mr. Whitney did in 1946 exactly what you did in 1959, wouldn't it?

A. No, sir, I wouldn't understand it that way.

Q. Wouldn't you understand that "Please be advised that neither the Brotherhood of Railroad Trainmen nor any department or bureau thereof is financially interested in any case or cases now pending or to be filed by you in any court, in any State, against common carriers or others and that no part of any fee received by you as anticipated will be accepted by the Brotherhood of Railroad Trainmen"—

A. I would take it from that that Mr. Whitney dismissed DeParcq as a legal representative of the Brotherhood.

Q. Well, this was addressed to all Regional Counsel of the Brotherhood of Railroad Trainmen.

A. That it refers to what DeParcq did.

Q. I understand that. But does it not say that the Brotherhood will not accept any splitting of fees from any Regional Counsel thereafter? Isn't that what it says?

A. It states that, but I didn't understand that that applied to anybody other than DeParcq, who was dismissed at that time because he split fees and handled his affairs [fol. 208] in a way that was not in accordance with the policy of the Brotherhood.

Q. Are you sure that Mr. DeParcq was dismissed then?

A. Yes, sir, he was.

Q. Who was his partner?

A. I wouldn't know if he had a partner at that time.

Q. Well, these two exhibits, one was addressed to Mr. DeParcq and one was addressed to All Regional Counsel. Now, the DeParcq Exhibit Number 3 addressed to All Regional Counsel has the same purport as your letter of March the 16th, namely, that thereafter there would be no fee splitting, does it not?

A. It may have had that implication, but so far as my letter is concerned, there has been no fee splitting since my directive has been issued.

Q. I understand that, sir, but Mr. Whitney, as President, his letter didn't do any good, did it?

A. Mr. Whitney probably didn't handle it to the same extent that I have handled the affairs of the Brotherhood.

Q. That's exactly what I am trying to bring out, sir, that notwithstanding that he wrote this letter, the same sysem and the same fee splitting continued right on up until April the 1st, 1959, did it not?

A. That's possible. That's one reason I went to the Illi-
[fol. 209] nois Supreme Court, because I didn't agree with that pro-
cedure.

Q. What is your ability to say that your letter will be any more efficacious than Mr. Whitney's was?

A. Because I as the President of the Brotherhood will see that the directive that I put out will be lived up to.

Q. Your successor, of course, would be able to reverse your ruling on that, wouldn't he?

A. I couldn't speak for any other human being except myself.

Q. That's what I am undertaking to point out. Your successor would be able to do just exactly what President Whitney did and that is not pay any attention to your letter of March 16, '59?

A. No, sir, I would have to disagree with your theory on that, because we now have a Supreme Court decision of what can be done and what cannot be done, and I would say that my successor, regardless of who it would be, would have to live up to the Supreme Court decision to the letter. We know what we can do under the Supreme Court decision and we know what we cannot do, and any individual that would be elected as a successor to me would certainly be required to respect the decision that was unanimous by the Court.

Q. When do you expect to retire from office?

A. I expect to retire December 31, 1962.

Q. You say that you now have a decision of a Court.
[fol. 210] You are in control of this entire department

and you have investigated, as you say, into the whole situation and how it's operated and its background?

A. Yes, sir.

Q. You knew, of course, then, of a case in 1933 in 15 Ohio Law Abstracts, 106, under the title of In re Petition of the Committee under Rule 28 of the Cleveland Bar Association against Newcomb, Newcomb & Nord. That laid down the same principles, did it not, as this present Supreme Court of Illinois?

A. I am not so familiar with what they did. I wouldn't say that it came in the same classification as the Supreme Court of Illinois.

Q. Had you heard of the case of Dworken against Brotherhood of Railroad Trainmen, Grand Lodge, Number 354,975 in the Court of Common Pleas of Cuyahoga County, Ohio, in 1932, in which the Brotherhood agreed to cease the practices that were entailed in the operation of the Legal Aid Department as then set up and said that you had quit them since 1931 in December? Are you familiar with that?

A. No, sir, I am not.

Q. That's two Court opinions that have told you what you could and could not do prior to that time, is that correct?

Mr. Stallard: Counsel for defendant at this time states [fol. 211] that those opinions ought to be introduced so that they may speak for themselves.

Mr. Bowles, Jr.: I intend to do so at the proper time.

Mr. Stallard: This witness cannot interpret an opinion he has never seen, and this counsel for the defendant does not know the content and therefore he objects to this line of questioning.

Q. Well, you had not run across these decisions in your investigation of the background of the Brotherhood?

A. No, sir.

Q. Well, you made a distinction now as to the guarantee of compliance with the Illinois decision on the ground that Mr. Whitney had no Court decision to guide him and you do, and I am pointing out two that might have guided Mr. Whitney.

A. These are cases, I presume, that Mr. Whitney didn't present to the Court. These are cases that some other individual brought before the Court. The situation that confronted me was that I went before a Court voluntarily and asked the Court for clarification, which they courteously gave me.

Q. Dworken against Brotherhood of Railroad Trainmen, Grand Lodge, in the Court of Common Pleas of Cuyahoga [fol. 212] County, Ohio, was a case where the Brotherhood was brought before the Court, so Mr. Whitney certainly ought to have known about that one, don't you think?

A. I would say that in the history of the Brotherhood, of which we are nearly 80 years old, that there have been probably hundreds of cases brought up in the last 70 or 80 years against the Brotherhood, many of them which are lost in the files because all parties involved are dead and gone. We as a labor organization have been continually confronted with all kinds of particular cases, some of which involved legal aid matters and many other items of which we over the period of years have just simply had to file them, because we lived up to the Court's rulings, whatever the ruling was. We haven't been in violation of any Court's ruling, to my knowledge.

Q. Well, Mr. Kennedy, what I am saying to you is assuming, now, that the case involved what I said it did—

A. Yes.

Q. —and assuming that it had been brought to either Mr. Whitney's attention or your attention, it would have been a ruling of a Court that would have told you what you could and could not do.

A. And we probably did live up to it, too, because that was over 30 years ago, as I recall.

Q. But you didn't stay living up to it?

[fol. 213] A. I don't know why we haven't.

Q. Well, you admitted in your answer that you were splitting fees up until April 1, 1959.

A. I am not so sure that we were doing it in the State of Ohio.

Q. Oh, I see.

A. You are talking about the State of Ohio, some Court in Ohio.

Q. Well, is your position, then, that you are only going to stop these practices where each State makes you stop them?

A. No, sir, we are living up to these practices now in 50 States.

Q. Now, if Ohio told you in 1932 what you could and could not do, as I have said, then you did not obey that in Ohio thereafter?

A. We obeyed that in Ohio, so far as I know.

Q. Now, would you tell me, please, sir, in your own description how your system as now operated under the designation of Department of Legal Counsel differs from the system called the Legal Aid Department that was operated prior to April 1, 1959? In what respects does it differ?

A. Well, I will clarify that by telling you what the B. of R. T. may do and what it may not do. I'd say, one, the B. of R. T.—

[fol. 214] Q. Are you reading from your March 16th letter?

A. No, not necessarily from the March 16th letter.

Q. What are you reading from?

A. This is a letter that was put out by the Association of American Railroads, put out by Mr. K. A. Carney, General Counsel, and every railroad in the United States received that. This letter states what the B. of R. T. can do and what they cannot do under the Illinois Supreme Court decision. I agree with Mr. Carney, and that is exactly what we are doing now.

Q. Well, do you take the position so far as the State of Virginia is concerned that you can do in Virginia whatever the Association of American Railroads and the Supreme Court of Illinois say you can do?

A. I take the position that we can do that in any State until that particular State sets up a stipulation that will tell us to do something different.

Q. I see.

A. Until the State of Virginia—and we have asked many times—will tell us what we can do in the State of Virginia.

Q. Who did you ask?

A. We have asked our attorney to go before the Courts and say that we are agreeable to a stipulation today on what can be done in the State of Virginia if we can get [fol. 215] that. Up until this time we have been unable to get it. Nobody seems to want to give us a clarification of what we can do. And we have been doing business as a Brotherhood of Railroad Trainmen in the State of Virginia for 75 years and we are trying to find out now what we can do in the protection of the legal interests of an individual who has sustained injury or death on a railroad.

Q. Well, you have found out in Illinois a number of things that you can't do anywhere, haven't you?

A. That is correct, and we are not doing it anywhere.

Q. And you realize that that is the purpose of this proceeding?

A. The purpose, I presume, of this hearing is to bring about a clarification of what we can do and what we can't do in the State of Virginia, and we will be very happy to comply with that decision when anybody will sit down and tell us what we can do and what we can't do.

Q. Well, the complaint shows what the purpose of this proceeding is.

A. I presume that's correct.

Q. Yes. Well, now, I interrupted you when I asked you to tell me how they differ.

A. All right. One. The BRT may maintain a staff to investigate injuries to its members. We maintain that staff. That staff is maintained in Cleveland, Ohio.

[fol. 216] The BRT may so conduct investigations that results are of maximum value to members in prosecuting their claims.

The BRT may make reports of investigations available to the injured man or his survivors. In other words, if I send a man out from my office to make an investigation of a serious accident, there is nothing to stop me from sending a copy of that report to the injured man or his survivors.

4. Investigations to be financed by the BRT. In other words, the investigations will be financed by the Brotherhood of Railroad Trainmen as a labor organization, which we are doing now.

5. The B. of R. T. may make known to the injured members and their survivors, first, the advisability of obtaining legal advice before making a settlement; and, second, the names of attorneys who have the capacity to handle such complaints successfully.

Now, here is what we understand the B. of R. T. may not do.

1. The BRT employees may not carry contracts for employment of any attorney. And I have prohibited any individual of this Brotherhood from carrying a contract for any attorney.

2. May not carry photostats of any settlement checks. And I prohibited them from carrying any kind of a photograph of any settlement previously made.

[fol. 217] 3. No financial connection of any kind between the BRT and any lawyer is permissible. No connections whatsoever. There isn't an attorney representing our Brotherhood in the former Legal Aid Department or in the present Counsel that has any financial connection with the organization.

4. No lawyer can properly pay any amount whatsoever to the BRT or any of its departments, officers, or members as compensation, reimbursement of expenses, or gratuity in connection with the procurement of any case.

5. The BRT cannot fix the fees to be charged for the services to any of its members.

We think that that clarification is absolutely in accordance with the decision of the Illinois Supreme Court and we agree to that, even though that's put out by the Association of American Railroads. We have many things in common with the Association of American Railroads, and sometimes we don't always agree with their theories and ideas, but we do agree with this. And a copy of this was sent to me. And if I had any objections—I had no objections whatsoever, because I said that is the way the Brotherhood of Railroad Trainmen, so long as I am President, is going to handle the personal injury claims of its members.

Q. Well, now, Mr. Kennedy, you agree, then, that if any [fol. 218] member of the Brotherhood or any of the investigators sent out by you go any point further than merely suggesting the name of a lawyer, then he is in violation of the Illinois decree?

A. He would have that right under this to suggest—

Q. That isn't answering my question, sir. I don't believe that answers my question.

A. He would have the right to name the attorney who would have the capacity, in his opinion, to handle the claim successfully in any particular State.

Q. And that's as far as he could go under that letter?

A. That is right.

Q. Now, if he undertakes to take that man to the attorney, he would be doing wrong, wouldn't he?

A. That is right. He would have no right to take him to the attorney.

Q. And he would have no right to try to persuade him to go to that particular attorney?

A. No, he could just mention the attorney's name.

Q. And do you interpret that letter to mean that he can only recommend the so-called Legal Counsel of the Department of Legal Counsel?

A. He would have a right to recommend who he felt, that is, any attorney within that particular State or territory, where he could get what he felt was adequate justice.

[fol. 219] Q. And if it turned out that the investigator was uniformly recommending the Legal Counsel associated with the Department of Legal Counsel of the Brotherhood and no one else, would you consider that he was living up to the spirit of that letter?

A. If he knew of any other attorney in that State that was fully informed as to the Federal Employers' Liability Act, I would say that he would have a right to so inform the individual.

Q. I again say, sir, that this is not responsive to my question, I believe. I put to you this proposition: that if it turned out that this investigator was uniformly recommending only one person and just one and that person happened to be the Legal Counsel connected with the Department of Legal Counsel of the Brotherhood, would you consider that in compliance with that letter?

A. Yes, I would say that that would be in compliance with that letter if there was no other individual there that could be informed of the Federal Employers' Liability Act.

Q. Would you suggest, sir, that there is only one lawyer in the States of West Virginia, Maryland, the District of Columbia, and Virginia that's capable of handling a Federal Employers' Liability Act case?

A. No, sir, I presume there are a great many of them if we can become familiar with them.

[fol. 220] Q. Well, then, I am putting this purely as a hypothetical question in regard to the compliance with the terms of that letter. If it should appear that your investigators were uniformly referring cases to Mr. Savage and to no one else in that territory, then you would say it was not in compliance with that letter?

A. That is correct, if that was to Mr. Savage. Mr. Savage, in the first place, isn't a citizen of the State of Virginia.

Q. Well, Mr. Savage has been handling up until certainly April 1, 1959, cases in the State of Virginia?

A. I think that's correct.

Q. Well, he was not a citizen of the State of Virginia then?

A. No, not at that time. But if we can get some agreement with the State of Virginia, we have no objection to appointing an attorney, a competent and qualified attorney in the State of Virginia, to handle our cases, regardless of what kind of cases they may be, personal injury or otherwise.

Q. Now, Mr. Kennedy, you still have the same legal counsel now that you did in '59, don't you?

A. Yes, we still have.

Q. And approximately the same that you had when you came into office?

A. Well, there has been some changes made, I will have [fol. 221] to agree.

Q. By virtue of death or resignation or otherwise?

A. Yes, there has been some changes made.

Q. The Constitution, Section 91, works the same way that it did before?

A. That is right.

Q. No change in that?

A. No.

Q. No change in these rules and regulations?

A. No, sir.

Q. Now, as I understand it, the President or the head of the Grievance Committee or any of the local officers of a local lodge go to a man when he is injured and advise him of the facilities that are available to him under the Department of Legal Counsel?

A. Yes, I would say that that's our usual procedure.

Q. And the purpose of that is to let him know that there is a department that can help him?

A. The purpose of that is to let him know that he has got certain rights as a citizen and as a railroad employee that should be protected.

Q. And that you are willing to investigate the case for him?

A. If he chooses to use the Brotherhood.

Q. Well, now, the rules of the Brotherhood, as I under- [fol. 222] stand it, require the Secretary of the local lodge to notify you immediately, the Grand Lodge immediately?

A. We require that.

Q. Now, the purpose of this contact, initial contact, is to advise him also that he may have the use of the competent attorneys that you have selected, if he wants them?

A. That's not necessarily true. I would say that in the first place we want this evidence, statistical evidence of injuries and of deaths and of accidents. We are the ones that are responsible for the welfare of these individual railroad workers when we go before the Interstate Commerce Commission. We find that as a less number of employees that are working on the American railroads, accidents rise, and we are keeping a very accurate record of men that are killed in the operation of railroad service, and we once every year go before the Interstate Commerce Commission and point out to them the defects that we find in the handling of the railroad employees' work on these railroads. But, in addition to that, of course, we advise the individual, or the individual's wife if there has been a death. as to their rights under the law, as to their rights under the Federal Employers' Liability Act. And it's not always the Federal Employers' Liability Act that applies, because

men can be hurt on a railroad and the Federal Employers' Liability Act may not be applicable. It may be under a [fol. 223] State law. It may be under laws of which some particular railroad doesn't work under government supervision. And so the individual knows very little about his legal rights, and so all we do is to notify them as to their legal rights and suggest that they confer with a competent and qualified attorney for further handling.

Q. Well, what you actually do is that you advise him what his legal rights are?

A. We certainly do.

Q. Yes. Now, then, you also advise him that he can have the services of your selected counsel whom you deem competent if he wants them?

A. If he chooses to do so, yes, sir.

Q. That is right. Now, in the serious cases you advise him to get your counsel, don't you?

A. We suggest that if he is interested he can go to our counsel. He doesn't necessarily have to use our counsel.

Q. But you do advise him to do that?

A. If he wants to. We don't force him to do it if that's against his will. He can go to any counsel he chooses to do so.

Q. Well, now, how far do you feel under the Illinois decision that an investigator can urge him to select your legal counsel?

A. Only to the point that we have such a counsel. Beyond [fol. 224] that—

Q. Beyond that you don't think that he can do anything to persuade him to employ your counsel?

A. No, sir.

Q. Or to advise him how good that man is as compared to others?

A. We wouldn't persuade a man against his will to do anything. We will point out to him what his rights are.

Q. You are not exactly answering the point of my question, sir. I am not talking about against his will, I am talking about even undertaking to tell him, "Now, this lawyer is better than that lawyer and that's the reason we have selected him as our legal counsel."

A. We wouldn't say in any terms that one lawyer is better than another. We would say, however, that the legal counsel that's employed by the Brotherhood to handle all legal matters, regardless of whether it's personal injury or otherwise, is a competent and qualified attorney, highly respectable in his jurisdiction, and that we would suggest that if he wanted to get the advice that we think would be favorable and right and correct under the law, that he could go to that individual.

Q. And you think that this investigator or no one in the Brotherhood, whether he be a lodge officer or just another member, has any right to do anything more than just tell [fol. 225] him those facts?

A. We just tell them that.

Q. And do nothing to induce him or to get him to go or persuade him to go?

A. We wouldn't use persuasion. We would just point out to him who the legal counsel for the Brotherhood is.

Q. But if he did, that would not be in accordance with the Illinois decision, to use persuasion or arguments?

A. No, we would say that persuasion would be contrary to the Illinois decision.

Q. Now, your Regional Counsel had to, when you called them such, and your legal counsel now have to be members of the Brotherhood, do they not?

A. Not necessarily, no.

Q. Well, they all are?

A. No, sir, they are not.

Q. All except one, I believe?

A. I don't recall just how, but there is no requirement in our law that legal counsel must be members of the Brotherhood of Railroad Trainmen.

Q. Well, would you look at your latest directory and see which ones are and which ones are not? I think it's at Page 80. Page 80 of the October one. Is that the latest one, the October 1960?

A. Yes—no, the latest one would be January of 1959.

[fol. 226] Q. There is no April one as yet?

Mr. Henslee: Yes, that's out.

A. Yes, that's out. But I don't have it with me.

Q. Could we have a copy of that?

A. Yes.

Mr. Bowles, Jr.: Would you arrange, Mr. Stallard—

Mr. Stallard: The latest one?

Mr. Bowles, Jr.: —to get us a copy of the January, '61 and April, '61, both? January and April ones, both, if you will.

Mr. Stallard: I believe he has April with him.

Mr. Bowles, Jr.: You have filed the October one.

Mr. Stallard: You want the April, '61?

Mr. Bowles, Jr.: January and April of '61.

Mr. Henslee: The last two.

Q. In the October one, I think, all except one of the designated legal counsel are lodge members, and he has an application pending, and he is a partner of Maurice M. Davis. That is Mr. Shirley M. Helm in Texas and his partner is a lodge member.

A. That's right.

Q. So that substantially all of the legal counsel—in fact, [fol. 227] all except one—are lodge members?

A. They are, but there is no requirement that they be.

Q. I understand. Now, I believe that there are no more Regional Investigators as such? You don't call them Regional Investigators any more?

A. No, sir.

Q. Now, the Secretary of the Lodge, each Lodge, is still required to send in these reports, which I believe—what are they, LA-1; is that the designation of them?

A. I believe it's LA-2.

Q. Anyway, it's the first report of the thing?

A. Yes.

Q. Now, in effect they are now the Regional Investigators, are they not?

A. I would say that they supervise all of the affairs of the local lodge, including injuries.

Q. Well, you have stated, I believe, in a prior deposition that they perform the same functions that the previous Regional Investigators used to perform.

A. Well, I wouldn't say exactly that, but—

Q. I believe you did say that.

A. —but they are required to make a report of every accident. Otherwise we wouldn't have any record of an accident that occurred.

Q. Well, they also undertake to make investigations, [fol. 228] don't they?

A. No, that's not necessarily true. They don't always make investigations.

Q. You formerly said that, "Regional Investigators, as far as they are concerned, we don't have any of the so-called Regional Investigators we had before, in the relationship of being paid. We have our Secretaries of every lodge who are investigators now, and they perform the same function? Is that correct?

A. Well, I would say that they perform the same function of reporting accidents, but not necessarily the same function of a Regional Investigator in going out and investigating the particular accident.

Q. Well, now, who does investigate the accident?

A. Many of them are never investigated by anybody.

Q. I am talking about really the serious ones that get into the hands of legal counsel.

A. I would say that possibly some local lodge officer would make the investigation.

Q. It would not be a special investigator sent out from your office?

A. No, not necessarily, no, sir.

Q. It could be?

A. It could be, yes, sir.

Q. Well, now, do you claim that these reports are only [fol. 229] for statistical purposes?

A. Yes, sir, we have used them for statistical reasons for 50 years.

Q. I understand you have used them that way, but is that the only reason you want them?

A. That's the primary reason, yes, sir.

Q. Well, what is the reason for the urgency of getting those reports in? What is the reason for getting them in the first day or two after an accident?

A. Because that's the only time you can find out the true provisions of an accident. If you delay it, you miss the opportunities.

Q. Well, that means, then, that the report is really to find out the facts about the injury?

A. The actual facts.

Q. Yes. And that is in order to get to the Grand Lodge as promptly as possible the initial investigation of that injury?

A. That's true.

Q. In your letter, which has heretofore been filed, of January 23, 1961, to All officers and members of the Brotherhood of Railroad Trainmen in the State of New Jersey and New York City area, you stated in part of that, "Promptness in making these reports is very essential. Therefore they should not be delayed awaiting the develop-
[fol. 230] ment of facts other than as above stated." And those facts are the names and the addresses of the people that were hurt and how they got hurt, the place of the accident and the railroad?

A. Yes, sir.

Q. Well, now, I ask you again, from a statistical standpoint, why is it so important to get that information right on the first day or two?

A. Because we found out over our years of experience that you can get more actual facts if you get the report within the first few days than you could if you waited for 30 days or 60 days.

Q. Well, now, if a very serious accident happens and it is necessary to send out an investigator from the Grand Lodge or somebody in the territory who is already designated as an investigator, I take it that it's important to get on the job right away?

A. I would say that we would have to make the investigation as promptly as possible.

Q. Well, now, the purpose of that, as we have said, would be to find out the facts so that the man's rights could be protected?

A. The purpose of the investigation, of course, is to protect his rights. Many of these investigations of which we have an investigator are held by the Bureau of Safety
[fol. 231] of the Interstate Commerce Commission, and we attend the investigations and we get the facts the same as they do.

Q. I am not talking about that. The purpose of this whole Department of Legal Counsel is to protect the rights of the individual member that gets injured?

A. We find under our laws, our present safety laws, that the Interstate Commerce Commission employs an individual in different sections of the United States to investigate all serious railroad accidents. We attend those same hearings for the purpose of getting statistical evidence to the same extent that the Interstate Commerce Commission does, and so it is important that we get the same advice by our local lodge officers as to a serious accident, a collision or otherwise, as the government does in Washington, so that when the hearing is held, generally within a few days, we can have our representatives there also.

Q. Well, now, Mr. Kennedy, one of the main purposes of the Department of Legal Counsel is to look after the interests and to see that the rights of your individual members are preserved, isn't that correct?

A. That would be one of the purposes, yes, sir.

Q. I am leaving aside now the statistical end of the thing. One of the reasons that you originally set this thing up and the reason that it is maintained is to help these members who are hurt or are killed, their families, to preserve [fol. 232] their rights, isn't that correct?

A. I would say that the question of statistics is just as important as the question of helping the injured man, because we live by statistics, and every year the Association of American Railroads puts out their statistics. We find in many instances that the Association of American Railroads' statistics are not correct, and we keep our statistics so that when they are put out we put out statistics that we feel are more in accordance with the true facts.

Q. Well, now, you do agree, then, that the desire to protect the individuals' rights is equally important with the statistics purpose?

A. Yes, I would say that's true.

Q. So in the protection of the individual's rights it is then extremely important in your view that the actual facts be found out promptly?

A. As quickly as possible.

Q. And that is why you want these reports to be gotten to your Grand Lodge office in a hurry?

A. That's true.

Q. Now, was Mr. Norris W. Tingle a Regional Investigator?

A. I think that Mr. Tingle was a representative of—in Mr. Savage's office.

Q. Well, I believe you admitted in Paragraph 4 of the [fol. 233] answer that he was an employee of the Brotherhood?

A. I think at one time he did receive compensation from the Brotherhood. I am not certain as to the amount, however.

Q. Well, I am not interested in the amount. He is now an employee of the Brotherhood?

A. No, sir, he is not.

Q. Well, your answer says that he is.

A. Well, I don't know when that answer was made, but I don't think he is an employee of the Brotherhood at the present time.

Q. It was filed on August the 7th, 1959.

A. Well, he is not an employee now.

Q. He is not?

A. No, sir.

Q. Who does employ him now?

A. I wouldn't know.

Q. Well, when was he relieved of his responsibilities as an investigator?

A. I wouldn't know exactly, but he was relieved subsequent to the decision that we made the change of the Legal Department on or about April 1, '59.

Q. Well, he must have been relieved since August 7, 1959?

A. Yes. We found that that was true, but since then he has been eliminated and I think it was in 1960 at some time.

Q. Why was he eliminated?

[fol. 234] A. Because all investigators were eliminated. All investigators.

Q. All of them?

A. All of them. Every investigator has been eliminated, except those employed in the Grand Lodge headquarters in Cleveland, Ohio.

Q. Now, Mr. Savage entered into an agreement with the West Virginia Bar in June of 1958. Do you know about that?

A. Yes, I do.

Q. Have you seen that agreement?

A. I think I did read it.

Q. Mr. Savage agreed that he would be responsible for the future conduct of Mr. Tingle in West Virginia in that agreement, did he not?

A. I presume that's part of it.

Q. Well, now, you have read it. Do you know that's a fact?

A. I haven't become exactly familiar with it, but I have read it, and if that is a part of it, why, of course, that's part of the facts.

Q. Now, Mr. Tingle is Secretary of Fraternity Lodge 124, Baltimore, Maryland, isn't he?

A. Yes, sir.

Q. And he is also the Legislative Representative of that Lodge?

[fol. 235] A. I think that's correct.

Q. Now, as such, under the Constitution, as Secretary of that lodge, he is now performing the same functions of a Regional Investigator?

A. I wouldn't know what his duties are as far as Mr. Savage is concerned. He is not a Regional Investigator as far as the Grand Lodge of the Brotherhood of Railroad Trainmen is concerned.

Q. I understand. But you have already said that the Secretaries of the local lodges now perform substantially the functions that the Regional Investigators used to perform?

A. That's true.

Q. So Mr. Tingle is now substantially doing the same thing that he did before?

A. He might be authorized by that local lodge to do that.

Q. Well, he is bound to be if he is Secretary, isn't he?

A. Not necessarily. He wouldn't have to do it if he didn't want to do it.

Q. Doesn't your Constitution require him to do it?

A. No, not necessarily. I would say that we have never enforced the provisions of our Constitution to the extent that the letter implies.

Q. Well, I am not talking about the enforcement now, I am talking about what you can do under your Constitution. [fol. 236] Your Constitution requires the Secretary to file these reports?

A. Yes.

Q. And you have said that the Secretaries now, since you have abolished Regional Investigators, perform substantially the same functions that the Regional Investigators used to perform?

A. That's true.

Q. Now, do you know whether Mr. Savage employs Mr. Tingle?

A. No, I do not.

Q. Have you issued to Mr. Tingle any investigator's commission?

A. No, sir, I have not. I wouldn't know how far back you are going on this, now.

Q. I am talking about now, for 1961.

A. At the present time? Well, I would say that if we desired to have a particular accident investigated, we would probably authorize the Secretary of that lodge or the Secretary of any lodge to make the investigation.

Q. Well, do you issue cards to the BRT investigators now?

A. Well, we have to issue a card that would indicate that the individual would have authority to make an investigation.

Q. Yes. And you do issue those cards at the present time?

A. To the Secretaries.

[fol. 237] Q. And that's the card that has been filed, I believe, as Exhibit 7 with the second further call in this proceeding. Would you know about that?

A. I think that that's probably true.

Q. I hand you Defendant's Exhibit Number 7, second further call for production of documents—this is an exact copy of it; we haven't got the original here—and ask you whether or not that is the kind of card we are talking about?

A. Yes.
Q. And it has 1961 on there?
A. Yes, sir.
Q. Now, does Mr. Tingle carry one of those?
A. I presume he does if he is Secretary of his lodge.
Q. Now, all the Secretaries have these cards?
A. Yes.

Mr. Stallard: May I see it?

Q. Did you ever know a Mr. Marko M. Verbon?
A. No, sir. I don't know as I recall the name.

Mr. Stallard: What is the name?
Mr. Bowles, Jr.: Marko M. Verbon. V-e-r-b-o-n.

A. I think that that, if I am not mistaken, if that refers to an individual in the State of Montana, I would know who he was.
Q. That is right.
[fol. 238] A. If it's any other State, I wouldn't know.
Q. That is correct. Deer Lodge, Montana.
A. That is correct, I would know who he is.
Q. Is he the individual that the newspaper account said that he was fined $500 for contempt for soliciting, and so forth, in Montana and fined by Judge Taylor?
A. Yes, sir.
Q. And he was convicted of practicing law in Montana by the Powell County Court, I believe, on March 11, 1957. That's the man we are talking about?
A. I think that's the man we are talking about. That's the man that I discharged some time ago.
Q. He was fined $500 and spent five days in jail, I believe, according to this newspaper account?
A. I think that's correct, because when I read the same newspaper account I dismissed him by wire.
Q. Would you recognize that as the newspaper account?
A. I think that's a correct statement.
Q. That's a photostat of it, of course.
A. Yes.

Mr. Bowles, Jr.: Would you file that as an exhibit with your testimony, please, sir?

(News article re Mark Verbon, The Silver State Post, 3/15/57, marked, "Complainant Exhibit K-1.")

[fol. 239] Q. Now, Mr. Verbon, prior to this conviction, was a Regional Investigator?

A. That is correct.

Q. And he carried the same kind of card that Mr. Tingle is carrying now?

A. Yes, sir.

Q. And he was assigned to the region for which Messrs. Davis, Rerat, Yaeger & Lush were Regional Counsel, I believe?

A. Yes, sir.

Q. Now, shortly after this thing occurred about Mr. Verbon, that firm was dissolved, was it not?

A. Yes, sir.

Q. Did you have anything to do with its dissolution?

A. No, that came about by an agreement among themselves.

Q. Well, did you issue any requirement that they should be dissolved?

A. No, I don't recall that I did.

Q. Did this conviction of Mr. Verbon and the facts brought out in that have anything to do with the dissolution of that firm?

A. No, I would say that that is not true.

Q. Well, Mr. Kennedy, it is a fact, however, that the individual members of that firm formed other firms and those firms, shall we call them splitter firms out of that larger firm, were each assigned as Regional Counsel?

[fol. 240] A. Well, of course, one member of the firm died.

Q. Mr. Davis?

A. Mr. Davis died. And Mr. Yaeger, Sr., retired, and that brought about a change in the setup.

Q. Now, then, what firms came out of that firm, do you recall?

A. The Lush firm.

Q. Davis & Lush, wasn't it?

A. Well, it was Davis & Lush until Mr. Davis died. And Yaeger & Yaeger.

Q. And somebody else and Rerat?

A. And Rerat.

Q. Three firms came out of that?

A. Three firms, yes.

Q. And each one of those became Regional Counsel for the Brotherhood?

A. Yes, sir.

Q. And they were assigned portions of the entire region that Davis, Rerat, Yaeger & Lush had formerly held?

A. Yes, sir.

Q. So that that territory continued to be served by the same Regional Counsel, though divided up?

A. Yes, sir.

Q. Do you know how long Mr. Verbon had been a Regional Counsel?

[fol. 241] A. I am not certain as to the length of time that he was a Regional Counsel, although I never was very intimately acquainted with Mr. Verbon.

Q. But it went back certainly as far as 1954, didn't it?

A. I would say it went back several years, but I wouldn't know how far back.

Q. Now, I believe your organization used to publish a monthly paper called The Railroad Trainman?

A. We published a weekly paper called The Railroad Trainman.

Q. I say you used to publish a paper called The Railroad Trainman, a monthly paper?

A. We used to publish a monthly magazine called The Railroad Trainman.

Q. And you now publish a weekly which is more the type of a newspaper, and that's called the Trainman's News?

A. The Trainman News.

Q. The Trainman News? Does that go to every member of your Brotherhood?

A. Yes, sir, it goes to every member of our Brotherhood and every member of Congress and every library in the United States and Canada.

Q. I believe the advertisement on the masthead says that it's read by about 500,000 persons?

A. We hope so.

[fol. 242] Q. Now, all Regional Counsel or Legal Counsel receive it, do they not?

A. Yes, they would receive it.

Q. They would have to if they are members of the Brotherhood in the usual distribution?

A. That would be an ordinary procedure.

Q. I ask you to look at this one, which is the Trainman News, Volume 14, Number 43, of October 24, 1960, and ask you to look at Page 3 of that and call your attention to the box in the lower right-hand corner.

A. Yes, sir.

Mr. Stallard: May I see it?

Mr. Bowles, Jr.: Yes. Excuse me.

Q. This box says in large print, "Two Lodge 124 BRTers lose legs on same day.

"Baltimore. Fraternity Lodge 124 here experienced one of its darkest, most tragic days recently.

"On the same day, two BRTers suffered injuries in separate accidents that caused each man to lose his legs.

"K. E. Kennedy, 33 and the father of four, lost both of his legs above the knees following an accident in Newark, Delaware.

"R. L. Curley, 44 and father of a child, lost one leg above the knee and the other below in an accident here.

"Curley is recuperating in City Hospital here and [fol. 243] Kennedy in Wilmington General Hospital. Both men are coming along well, reports N. W. Tingle, 124 Secretary."

Is that reporter the same man we have been talking about, Mr. Norris Tingle?

A. Yes, sir.

Mr. Stallard: May I ask what the initials are?

Mr. Bowles, Jr.: N. W.

Mr. Stallard: N. W.?

Mr. Bowles, Jr.: I ask you, sir, to identify that and file it as an exhibit with your testimony. Number 2, I believe, marked Kennedy-2.

(Trainman News, 10/24/60, marked, "Complainant Exhibit K-2.")

(Recess.)

Q. Do you know Mr. E. A. Stouvenel, S-t-o-u-v-e-n-e-l? He is President of Lodge 183 in Clinton, Ohio. That's Hand-in-Hand Lodge. It's on Page 16 of the October one.

Mr. Stallard: What is the name?

Mr. Bowles, Jr.: S-t-o-u-v-e-n-e-l.

Mr. Bowles, III: It's in the October one. Page 16.

Q. Page 16.

A. What lodge did you say?

[fol. 244] Q. 183.

A. Where did you say this gentleman lived?

Q. Clinton, Ohio. Iowa.

A. Oh, well, now, that's a little different. You had me highly confused, because that's two separate States. Yes, I know who you are speaking about now.

Q. Well, he is—well, I don't know what to call him exactly, not a Regional Investigator but an investigator for the Grand Lodge, I believe.

A. He probably has investigated certain accidents.

Q. Well, he carries one of these cards like we talked about for Mr. Verbon and Mr. Tingle?

A. Yes, sir.

Q. Now, did you appoint him?

A. Yes, I would appoint him.

Q. I show you a photostat of a letter which purports to have been sent out by Mr. E. A. Stouvenel, BRT investigator, I presume in his district, and ask you would you recognize his signature?

Mr. Stallard: Let me see that, please.

Mr. Bowles, Jr.: Well, I thought all of you would look at it together.

Mr. Stallard: Counsel for the defendant would object to the introduction of this letter or cross-examination of the witness because the letter bears no date and therefore we [fol. 245] do not know when it was sent out, if it was ever sent out.

Mr. Bowles, Jr.: I intend to show, and I can't do it all at one time, that a letter was sent out by Mr. Stouvenel within the last two or three months. It does not bear any

date. And I wish to examine the witness with regard to certain portions of it.

Q. In the meantime, Mr. Kennedy, what is Mr. Stouvenel's district or what part of the country does he serve?

A. I would say that he simply serves the district of which that lodge has jurisdiction, which is Clinton, Iowa.

Q. Did you get a copy of this letter?

A. No, sir. This is the first time I have ever seen it.

Q. Do you know whether a copy came to your office?

A. No, sir.

Q. The letter says that, "The B. of R. T. constitution"—I am quoting—"provides that a lodge officer is to inform the Legal Aid Department when one of our brothers are injured and then I in turn am notified by the Grand Lodge of the happening of the accident so that I can contact our injured members and see to it that your rights under the Federal Employers' Liability Act are protected." That's in accordance with what we have just previously said, I believe, in the Constitution?

[fol. 246] A. Yes.

Q. "In recent months the reports are sometimes delayed or absent. It has been my experience that the first 24 to 48 hours following a railroad personal injury is the most important time to develop facts." We just agreed that that is a fact?

A. Yes.

Q. "The mere fact that an employee is on the job when injured does not in itself make out a claim against the railroad employer and the negligence of the company in most cases has to be established." That you have pointed out yourself, I believe?

A. Yes.

Q. "I am told by the lawyers for the Brotherhood that the company claim agents regard the first day following the accident to be their most important day to establish that the liability is in favor of the company." I would assume you wouldn't disagree with that?

A. No, I have found that to be true in many instances.

Q. "You can therefore see why prompt notice to me of an accident is most important."

Then there occurs the next paragraph.

"The assistance that I provide for our injured brothers is given free to the individual member and it is obvious to say that an injured member has everything to gain and [fol. 247] nothing to lose by contacting me."

That is a fact, is it not?

A. I wouldn't say that's a fact. To what extent he knows the workings and the intricate parts of the Federal Employers' Liability Act, I wouldn't know.

Q. I agree with you, Mr. Kennedy. I gather from this sentence that it's important to get the thing going and to contact him. "We will get it going." But if he feels somebody else ought to be brought in, the somebody else will be brought in. Now, that letter in substance is in accordance with the purpose of the Department of Legal Counsel, is it not?

A. That—

Q. That portion of it relating to the protection of the members' rights?

A. There is some parts of that letter that's in accordance with it. However, the issuance of the letter was contrary to my instructions.

Q. Well, you did not order this letter to be sent out, I gather?

A. No, I didn't. I have never seen the letter before.

Q. Well, I just understood that you hadn't seen it, so you couldn't have ordered it to be sent out?

A. No.

Mr. Bowles, Jr.: Would you file that as an exhibit with [fol. 248] your testimony for identification, please? That's Number 3, I believe.

(Letter, E. A. Stouvenel to Dear Sir and Brother, marked, "Complainant Exhibit K-3.")

Mr. Stallard: Counsel for the defendant would object to the introduction of this letter as an exhibit unless the complainant can show the date and the circumstances under which it was sent out, for the letter could have been sent out years ago.

Q. Well, Mr. Kennedy, I believe that you have just said that it is in accord with that portion of the purposes for protection of your members in substantially the portions that I read?

A. There are some parts of it that appear in accordance with our present procedure, although an undated letter such as that we don't regard within the Brotherhood as having any particular significance.

Q. Well, I have already said that I expect to show when and where and the circumstances under which it was made.

(Discussion, off the record.)

Q. Well, now, you have already said that you knew the firm of Yaeger & Yaeger that are now your Legal Counsel in Minneapolis for a given territory?

A. Yes, sir.

[fol. 249] Q. And you appointed them?

A. Yes, sir.

Q. Do you know a man named William Siess? S-i-e-s-s, who is the Legislative Representative of Lodge 160 in Philadelphia, Pennsylvania? You will find that at Page 15 of the October, 1960, directory.

Mr. Stallard: What was the name?

Mr. Bowles, Jr.: S-i-e-s-s.

Mr. Henslee: Siess is the way you pronounce it.

Q. Do you know him?

A. Yes.

Mr. Stallard: Is he an attorney?

Mr. Henslee: No.

Mr. Bowles, Jr.: No, he is a Regional Investigator, isn't he?

Mr. Henslee: He was the Regional Investigator.

A. I think under our former procedure he was assigned as a Regional Investigator.

Q. He carries a card now, doesn't he?

A. For the local lodge.

Q. And the same kind of card that Tingle and Stouvenel and Verbon carry?

A. For their local lodges, yes, sir.

[fol. 250] Q. And did you appoint him?

A. Yes.

Q. Do you know—you can look at Page 24 of your October directory—Fred Harmon, who is Local Chairman of Lodge 318 at Anderson, Indiana. It's the October directory.

Mr. Henslee: Well, the last ones we have are these two here.

Mr. Bowles, Jr.: That's the only one that's been filed is the reason I am limited to one.

Mr. Henslee: These are the old ones that we have here, '58 and '59.

A. What is the number, the lodge number?

Q. It's Page 24, Lodge 318.

A. Yes.

Q. Local Chairman?

A. Yes, sir.

Q. Do you know him?

A. Yes, sir, I know who he is.

Q. Do you know R. D. "Bob" Morris, who is Secretary and Treasurer of Lodge 318, Anderson, Indiana?

A. Yes, sir.

Q. Is he a Brotherhood of Railroad Trainmen Investigator?

A. He probably could be, but I wouldn't swear that he is.

Q. Well, did you appoint him, do you know?

[fol. 251] A. If he is an investigator, I did appoint him.

Q. Well, does he carry a card like Tingle and Stouvenel and Verbon do? He is a Secretary. He would be the man that would normally carry out the functions of the old Regional Investigator?

A. Yes, he may have a card and he may not. I wouldn't say that he does. But he is the Secretary and he would probably make the reports whether he has got a card or not.

Q. Turn to Page 44 of the October directory, sir, and do you know R. M. Crago, who is a Local Chairman of Lodge 699 in Indianapolis?

A. Yes, sir.

Q. Do you know whether he carries a card?

A. Yes, sir, he does.

Q. He carries one of those cards?

A. Yes, sir.

Q. Did you ever know a man named Fred Weber, who is now retired?

A. You'd have to tell me—

Q. I don't know his lodge number.

A. I know many Webers. I couldn't say as to—

Q. Well, it's not important. Did you ever know a man by the name of George P. Rummel, who is now dead? He was a former griever of Lodge 261 in Indianapolis.

[fol. 252] A. Yes, I would recall a man named Rummel. I think he was killed in an accident.

Q. He is dead. I don't know how he died.

Mr. Henslee: He was killed on the New York Central.

The Witness: Yes, I think he was killed in a New York Central passenger train accident, if it's the same Rummel.

Q. Was he one of these Regional Investigators?

A. Yes, I think he was.

Q. Do you know a Mr. Gail Clinkenbaird?

A. Yes, sir.

Q. Was he a Regional Investigator?

A. He was for a lodge in Iowa.

Q. Well, did you appoint him?

A. Yes, sir.

Q. And he carried a card like these ones we were talking about?

A. Yes, sir.

Q. And he was assigned to Messrs. Davis & Lush in Minneapolis, wasn't he?

A. At that time. He is not assigned to anybody now.

Q. Well, he is a defendant in a proceedings in both Iowa and Nebraska, isn't he?

A. He was. Those proceedings, however, have been liqui-

[fol. 253] dated and disposed of.

Q. Do you know a man named Leander A. Pickard? He is Local Chairman of Lodge 1050 in Hornell, New York.

A. I know who he is, yes, sir.

Q. Well, does he carry one of these cards?
A. I couldn't say that he does. He may. I wouldn't know.
Q. I don't know either, so that's the reason.
A. No, I couldn't say. When you issue these cards, I couldn't say.
Q. They come out of your office, of course?
A. Yes, sir.
Q. Do you know a man named Don Taylor in Columbus, Ohio?
A. Yes, I know who Taylor is.
Q. Was he a Regional Investigator at one time?
A. I would say yes, he was.
Q. And you appointed him, of course, I gather?
A. Yes.
Q. Is he an investigator now?
A. He would be. He probably has a 1961 card.
Q. Do you know Emmett Adley in Canton, Ohio?
A. I think I know who he is.
Q. Well, who is he? Could you tell me?
A. The name I would have to identify.
Q. I couldn't find him in that thing, so I am asking you.
A. Well, let me just for a moment—

[fol. 254] Mr. Henslee: Off the record.

(Discussion, off the record.)

A. Let me see if that's the same one. No, I can't identify him. I wouldn't say as I know him at all.
Q. Do you know Stanley Ryder?
A. I know several Ryders.
Q. He is a Local Chairman of Lodge 71 in Oakland, California.
A. Well, you are a long ways from Cleveland, Ohio, but I happen to know him.
Q. He is at Page 10 of your October, 1960, directory.
A. Yes, I know who Ryder is.
Q. Said to be a Local Chairman.
A. Yes.
Q. He carries one of these cards, too?
A. Yes, sir.

Q. Do you know Harry Dragmire?

A. Yes, sir.

Q. What is he?

A. Dragmire, as I recall, was from—a representative from one of the western lodges.

Q. He was a Regional Investigator formerly, I believe, wasn't he?

A. Yes, he was. He is not at the present time, however.

Q. He is not?

A. No, sir.

[fol. 255] Q. He was assigned to Hildebrand, Bills & McLeod at Oakland?

A. Yes, sir. He has been removed.

Q. He is the person that was named in the Southern Pacific against Brotherhood of Railroad Trainmen in the District Court of Los Angeles, I believe?

A. And that was the reason he was removed.

Q. I understand. Do you know B. G. Byington?

A. If it's the Byington from Virginia.

Q. He is the General Chairman of the Central of Georgia Railroad.

A. Yes, I know who he is.

Q. And he is President of Local 1124 at Macon, Georgia. That's Page 64.

A. Yes, I know him.

Q. Would he be classed as an investigator? Would he carry one of these cards?

A. He could be, because of being President of a local lodge.

Q. What is the position of General Chairman of the Central of Georgia Railroad? I am a little confused about that. What does that mean?

A. It means that he supervises the Brotherhood's affairs on that particular railroad. It's a small railroad in the South.

[fol. 256] Q. Is it divided up by railroads for supervision?

A. Yes, sir.

Q. I believe your Legal Counsel in Birmingham is a lawyer named Al Rives, is that correct?

A. Yes, sir.

Q. And your Legal Counsel in Atlanta, Georgia, is the firm of Lewis & Lewis?

A. Yes, sir.

Q. They were former Regional Counsel as well, before this new system?

A. Yes, sir.

Q. Now, do you know Mr. Vernon Satterwhite who lives in my town, Richmond, Virginia?

A. Very much so.

Q. Mr. Satterwhite used to be your assistant, I believe?

A. He still is. He still is one of my Vice Presidents and a very—

Q. He used to be First Vice President; now he is Ninth Vice President or Tenth?

A. No, he formerly was the Assistant President of the Brotherhood; now he is a Vice President of our Brotherhood.

Q. And he is a Tenth Vice President, I believe?

A. I think he is, yes, sir.

Q. Well, is it a fact that Mr. Byington and Mr. Satterwhite have had any controversy of late?

[fol. 257] A. I would say not. I wouldn't say that Mr.—

Mr. Stallard: Counsel for the defendant objects to this line of testimony for it's not pertinent to the issue here.

Mr. Bowles, Jr.: I think if you let me pursue it a bit further you will see the pertinency.

A. I would say that knowing Mr. Satterwhite as I do, a very high-class individual, one of the most—I would say one of the most sincere individuals that I ever met; has never said an unkind word against anybody in this Brotherhood or any place else.

Q. Well, now, can you tell me whether or not there has been any controversy in the Brotherhood about the jurisdiction of Mr. Rives and Messrs. Lewis & Lewis?

A. No, sir, not to my knowledge.

Q. Not revolving around Mr. Byington?

A. No, sir.

Q. Mr. Kennedy, I am trying to move along here now a little bit. All of these Regional Counsel that have served since 1949 when you became President, you reappointed

them and continued them in office in so far as they did continue in office?

A. Yes, sir.

Q. And then when this new system came in, as is claimed, [fol. 258] the same men became Legal Counsel?

A. Yes, sir.

Q. Now, could you tell me with any degree of comfort at this time who these men were when you took office? I mean, your Legal Counsel. Or would it serve our interest better here if you would furnish us with a list of the ones who were Regional Counsel when you became President?

Would that save time, Beecher?

A. Well, I would say that the best way to save time would be to take a directory of our Brotherhood—

Q. Well, I don't want to take up the time.

A. —and that would list the groups who were the Legal Counsel at the time I took over.

Q. Well, now, here is what I want to arrive at, and if we can save time by reaching some understanding about it, I want to find out who were the Regional Counsel when you became President, and I see from the directory who are the Legal Counsel now, and the changes in there that occurred from that time until now I would like to know and the reason for them. In other words, if a man died, obviously somebody got appointed. And could we undertake to get that information by working it up and not going into it now?

Mr. Stallard: Well, we could stipulate the directory as of 1949—

Mr. Bowles, Jr.: I don't have all those directories.

[fol. 259] Mr. Stallard: But what took place—some of them died. I wouldn't know how to stipulate that.

A. Well, we have appointed individuals since, of course, that time, and some of the others have died and changes have taken place. Territorial changes have taken place.

Q. Well, your records would show who took whose place during that period?

A. I'd say we could furnish you with a fairly accurate statement.

Q. If you can do it without too much trouble and pretty accurately—

A. Yes.

Q. —would you agree to do that?

A. Yes, we can furnish that.

Q. I don't see any point to asking you, "Was Mr. So and So all the way through and did he die or what-not?"

A. No, sir.

Mr. Stallard: Let me see if I understand. You want the names of the Regional Counsel in 1949?

Mr. Bowles, Jr.: The names and the residences of Regional Counsel when he became President.

[fol. 260] Mr. Henslee: By "residence," you mean their office?

Mr. Bowles, Jr.: Yes, their office.

Mr. Bowles, III: Their territory.

Mr. Bowles, Jr.: And the names of Legal Counsel now.

Mr. Stallard: Of Legal Counsel now?

Mr. Bowles, Jr.: And the changes intervening. And by that I mean the time when one man ceased to be and who took his place or any new ones, and so forth and so on.

Mr. Stallard: I don't know that we can get into all that. It would be a very good memory, unless you have some document records.

Mr. Bowles, Jr.: I am sure they have the records at the office.

The Witness: We could give them a fairly accurate statement on it. Not knowing exactly the dates of death, but several of them have died.

Mr. Bowles, Jr.: Just the year would be quite sufficient, unless I would want it more specifically than that, and that's very simple to ask later on.

The Witness: Yes.

[fol. 261] Q. Now, who is your Legal Counsel for Virginia now?

A. The man who is handling our affairs for Virginia now is none other than Mr. Stallard.

Q. Does that mean Mr. Savage is not your Legal Counsel in Virginia?

A. He is not the Legal Counsel now in the State of Virginia.

Q. When you list them in this directory as your Legal Counsel, under the directory thing it doesn't appear that there is any Legal Counsel in Virginia?

A. No.

Q. Unless it's Mr. Savage?

A. That may be true from looking at the directory, but at the present moment there is no so-called Legal Counsel in the State of Virginia other than Mr. Stallard himself, who is handling this particular case.

Q. Now, in the answer—and I am going to make a mention now of something you couldn't possibly have any knowledge of and Mr. Stallard will—it's Paper Number 12 in this proceeding. Our Judge has a system of numbering his papers and that's a more easy way to identify it. It is the answer of the Brotherhood of Railroad Trainmen to the request for documents that was filed and sworn to by Mr. Maher on May 5, 1960. Now, in Paragraph 13 of that paper it says that Mr. Savage and Messrs. Lewis & Lewis have handled Virginia business, but not since the change [fol. 262] as Legal Counsel. Now, does that mean that you have had no Legal Counsel as such like Mr. Savage in Virginia since this change?

A. We haven't had any Legal Counsel in the State of Virginia for some time past and it's all been caused by the particular case that we are now discussing.

Q. I understand.

A. And when this case is disposed of we will have a Legal Counsel in the State of Virginia and he will be a citizen of Virginia, if we can ever get to the point where we can reach some kind of an agreement.

Q. That's what I am trying to get to right now. We are both working towards the same end in that regard. Now, you have explained that the reason for that is this suit?

A. Yes, sir.

Q. Now, who in Virginia now offers this service to Virginia members since April 1, 1959?

A. I have no idea. Nobody to my knowledge.

Q. You mean your members in Virginia don't get this service?

A. No, sir, they don't. They don't because of this lawsuit.

Q. And they contribute and what-not, but they don't have anybody that can give them this information and advice?

A. Unfortunately, the situation in Virginia is to the [fol. 263] extent that we are sitting by helpless waiting until this lawsuit or whatever procedure you may call it is disposed of and we can reach an agreement as to who will represent us in Virginia, and it will be an attorney from that particular State.

Q. Well, now, I understood your position earlier this morning to be that under the Illinois decision that until some other State said the contrary that that's what you were entitled to do in all 50 States?

A. We can't say to the State of Virginia that, "You are going to live up to the specifications of a Court in the State of Illinois." They would very politely tell us to mind our own business. We do say to the State of Virginia, "You tell us how we can operate as a labor organization in the protection of our members in the State of Virginia and we will comply with that request."

Q. Well, now, you did not file a declaratory judgment proceeding in Virginia as you did in Illinois to find out that?

A. No, sir.

Q. You have through Mr. Savage been negotiating with the Unauthorized Practices Committee of the Virginia State Bar for a considerable length of time, have you not?

A. Well, we tried to do in Virginia what we did in West Virginia. We authorized Mr. Savage to make his disposi- [fol. 264] tion of his particular case in West Virginia. Now, in this situation in the State of Virginia, we decided that—Virginia is one of the oldest of our States, I'd say one of the finest of our States, one where we have a lot of very loyal members—we decided that the time had arrived when they are entitled to have a representative in the State of Virginia and we intend to give them that.

(Discussion, off the record.)

Q. Well, now, there are States other than Illinois in which there is no proceeding pending and in which you have not sought any declaratory judgment and in which nothing has been done and in which you are now operating with a Legal Counsel, isn't that correct?

A. That is correct. If they don't raise the issue, we don't.

Q. Maryland is one of those, isn't it?

A. I presume Maryland is.

Q. Mr. Savage is your Legal Counsel in Maryland?

A. In Baltimore, Maryland, that is correct.

Q. Is Mr. Savage operating there in the way that Legal Counsel are operating everywhere else, so far as you know?

A. He is operating in the State of Maryland in accordance with the rules and regulations that I have insisted will be applied in accordance with the Illinois Court decision.

Q. So far as you know?

[fol. 265] A. Yes, sir.

Q. Now, if the Illinois decision is acceptable to other States and what-not, what reason would there be why you shouldn't have Legal Counsel in Virginia complying with that decision until it was decided that that wasn't sufficient?

A. The only reason that I know of is because of this pending lawsuit.

Q. And on account of this pending lawsuit, notwithstanding the fact that you feel that the Illinois decision is correct, you are depriving your members of this service in Virginia?

A. We are depriving our members of this service in Virginia not because of anything that the Brotherhood is doing, it's because we are held in a Court procedure that we feel is of sufficient—I wouldn't say evidence or whatever you would want to call it, the legal phraseology of it—that we would hold this thing under a status quo until this matter is disposed of, but we say and we stipulate again as we have in the past, it will be an attorney from the State of Virginia when we can reach an agreement with the State of Virginia, which now is handling these proceedings.

Q. Well, now, Mr. Kennedy, you did not because of the pendency of the Illinois case cease the practices there that [fol. 266] were later found to be improper and which are now admitted in this proceeding to have been improper?

A. There has been no proceedings in the State of Virginia that's been improper since I put the effective notice out April 1, 1959.

Q. That isn't what I asked you, sir. I said that in Illinois you did not on account of the pendency of those proceedings stop the practices in Illinois that were later in that pro-

ceeding considered to be improper and which are admitted in this proceeding in Virginia to have been improper?

A. I stopped them in Illinois as of this given date, April 1, 1959.

Q. Yes, but until the Court decided something, you didn't stop them?

A. Keep in mind that when the Court decided it, it was through my personal request that the Court decided it. I made a special request to the Court, probably the most unique request that's been ever made by a labor organization in America. I asked the Court for clarification of what I could do and what I should not do under the law. No other labor organization in the history of America has ever made such a request before any Court.

Q. All that may be fine, sir, but it doesn't answer my question. Would you mind answering my question?

[fol. 267] A. I would say that we are complying and have complied with the—so far as I know, with the laws of the State of Virginia since April 1, 1959.

Q. What I am asking you is that in this unique thing that you did, to petition the Court to find out what you could do, you did not stop the things that the Court later said you couldn't do until the Court told you you had to stop them? That's a fact, isn't it?

A. Well, of course, we asked for that consideration and they gave it to us.

Q. Well, however that may be, you didn't stop them until the Court said you had to, did you?

A. I presume we'd have to say no, we didn't do it, because—

Q. Right.

A. —because we were so confused that we didn't know what we could do and what we couldn't do, and we did what any respectable labor organization would do, go to a Court and ask for guidance. They gave it to us; we followed their advice.

Q. Now, skipping all that and to save time, if you would answer my question first and then explain it afterwards, I think we would get along faster. You maintain now that the Illinois decision is a proper one and is an outline of what you can and cannot do?

[fol. 268] A. It's a proper one for any State that accepts it.

Q. I understand. Now, then, why is it that you are not willing to go on and operate under that until Virginia tells you that that is improper?

A. We are willing to do it.

Q. Well, why don't you do it?

A. Because of this particular lawsuit.

Q. Well, why should this lawsuit stop you if the Illinois one that you yourself started didn't stop you?

A. Because we don't know what the status of our membership is going to be in the State of Virginia until these proceedings are over.

Q. Well, you consider that now, sir, a sufficient answer to my effort to find out what appears to me to be an inconsistency in position?

A. Well, I would understand your position is that why don't we apply the Illinois decision in the State of Virginia until some competent and qualified Court states in the Commonwealth of Virginia something different. Now, keep in mind that we as a labor organization don't want to do anything that's contrary to any law. That's one thing that we hold very consistent. We are a law abiding organization. When this action came against us in the State of Virginia, we simply said, "We won't apply any kind of a proposition in the State of Virginia until we know defi-[fol. 269] nitely what they want, even the Illinois decision." That may not be acceptable to Virginia. We don't know. If we thought for a moment it would be, we would make it effective tomorrow.

Q. The point that I am making is that that is a different method than what the Brotherhood pursued in the case of the Illinois request?

A. It is a different method, yes, sir.

Q. Yes. That's all I wanted to get you to say.

A. It's the only unique method that we have got.

Q. Now, in that same paper Number 12 in this proceeding, the answer of the Brotherhood to the request for documents that was filed on May the 5th and sworn to by Mr. Maher, in Paragraph 16 it is said that Norris W. Tingle has not performed any services in Virginia for two years before that date. Is that correct?

A. I wouldn't know. I presume it is correct if he said so.

Q. Well, that's what I was going to ask you. How do you know that's correct?

A. I wouldn't know.

Q. How does Mr. Maher know?

A. I wouldn't know how he reached that conclusion.

Q. Well, now, you have told me that no one performed those services, is that correct, so far as you know?

A. In the State of Virginia?

[fol. 270] Q. Yes.

A. Nobody performs any services in the State of Virginia for the Brotherhood of Railroad Trainmen.

Q. So you have no investigator in Virginia now?

A. No, sir.

Q. Now, have these Secretaries of the local lodges in Virginia been notified that they shall not discharge their duties required by Section 19 of the Constitution?

A. No, sir, they have not.

Q. And they are still performing them?

A. I presume they are.

Q. So that there is somebody in Virginia that is doing what Mr. Tingle used to do?

A. But they are laying dormant at the Grand Lodge.

Q. Well, they are required to send in these reports?

A. They are, and probably many of them did do it.

Q. And are they doing it?

A. I presume they are.

Q. And what becomes of those reports now?

A. They just lie in the file.

Q. Now, you are still operating in West Virginia and Maryland and the District of Columbia doing the same things there that you used to do in Virginia?

A. Well, we are complying with the Illinois decision in these other States.

[fol. 271] Q. Now, in the letter that we have referred to before that you wrote on March 16, '59, which is Exhibit 3(a) of the first call and Exhibit 4(j) with the second call, and I believe is now—off the record.

(Discussion, off the record.)

Q. You know what I am talking about?

A. I think you are talking about this letter here.

Q. Yes.

A. Yes.

Q. Now, in that letter, you set out what the duties and authority and responsibilities of Legal Counsel are, don't you?

A. Yes, sir.

Q. In this same Paper Number 12 that I referred to, the answer to the request for documents heretofore filed, Mr. Maher says at Page 5 of Paragraph 2, "Everybody, Investigators, Lodge Officers, and Legal Counsel, were notified of the change between March 20th of '58 and March 16, '59." Now, that is a period of just about a year, lacking four days. Now, could you tell me who was notified in that interim before your letter?

A. I presume Mr. Maher did it by verbal contact.

Q. And do you know what people he told about it?

A. I presume as he met each one of the Legal Counsel he informed them.

[fol. 272] Q. And do you presume that during that year that all over the country all Legal Counsel were told that they should not under any circumstance split fees or make any contributions to the Brotherhood?

A. They were told that we would comply with the provisions of the Illinois Supreme Court on a given date, prior to the final period of time that they specified.

Q. But they were told also that everywhere else it was perfectly all right to keep on doing wrong until that date?

A. Well, the Court gave us a period of time to comply and we didn't use that full period of time. Now, in the meantime, there probably were violations, but we made it effective April 1, 1959. There have been no violations since.

Q. Of course, the Illinois Court had no right to prescribe what you could do in other States?

A. That's true. And other States didn't raise the question that—

Q. And you accepted for Illinois as to what was right and wrong to do?

A. Well, we had to have some form to follow and we felt that by following a Supreme Court in the State of Illinois that we were on very good grounds.

Q. Well, you did agree that substantially what you read me here in the letter that you mentioned from the Associa-
[fol. 273] tion of American Railroads—

A. Yes.

Q. —that was the analysis of the Illinois decision?

A. That is correct.

Q. Now, then, you did agree then that certain things you could do and certain things you could not do?

A. That is right.

Q. Now, you knew that the Illinois Court gave you until July the 1st to put that into effect?

A. Yes, sir.

Q. Notwithstanding the fact that you had agreed that certain things were wrong, you continued to do it in other States, among them Virginia?

A. For a specified period of time we did. There is no question about that.

Q. Well, what is your opinion about that on the basis of good faith?

A. We would say that when a Court passes a sentence or when a Court tells you what to do and they give you a period of time to readjust your affairs and we don't even use that allotted time but we adjust our affairs prior to the expiration of that time, I think we acted in good faith to the Court.

Q. But you did tell in that interim these Regional Counsel that they could not make any more contributions?

[fol. 274] A. That is right.

Q. And we have already agreed that you did accept them up until April 1st of '59?

A. I would say that that's correct.

Q. Now, does the Illinois opinion forbid, in your idea in construing it, that counsel can or cannot make advances or loans to injured members?

A. I would understand that they cannot do that.

Q. Cannot do that? That's your interpretation of the opinion?

A. Yes.

Q. Your letter of March 16th doesn't mention that item, does it?

A. No, because I felt that that wasn't any of my particular business, what an attorney would do.

Q. Well, after all, these were the people that are appointed by you?

A. Yes, but we have so many other attorneys that could do as they pleased and we didn't want to set up a program for attorneys.

Q. Well, now, if you found that other attorneys were not complying in their own personal practice, did that excuse your people from not complying?

A. No, I would say not.

Q. Your letter of March 16th, then, left up to each indi-
[fol. 275] vidual Legal Counsel of your Brotherhood, so appointed by you, to interpret this Illinois decision as he saw fit?

A. Well, that would be in accordance with the attorney's given right to do that.

Q. Well, that is what you intended by your letter?

A. Yes, sir.

Q. Well, you did not intend by your letter, then, to say that, "If you don't subscribe to my idea of the Illinois opinion rather than some opinion of it that you may have, you can't be Legal Counsel any longer"?

A. No, sir, I didn't want to take that position.

Q. So in effect you left them perfectly free to do whatever they construed to be the Illinois decision?

A. Well, they are the ones that had a copy of the decision and, like good attorneys always are, they comply with the law.

Q. Well, that is an assumption, I fear, that our profession cannot indulge to its full capacity, sir.

A. Well, of course, I have no way of advising the profession what they should do and what they shouldn't do, but I will say that as far as the Brotherhood is concerned, we try to live up to the Courts' rulings.

Q. Suppose you found that an attorney was not living up to those rulings, what would you do to enforce it?

A. I would remove him from office.

[fol. 276] Q. Have you removed any since?

A. No, I have removed them over a period of years, but I wouldn't say that I have removed them since.

Q. Have you removed anybody since this letter of March 16, '59?

A. No, I have not.

Q. Now, your rules and regulations that were put out in 1933 or somewhere back in there, pursuant to your constitutional provisions, which is Exhibit 3 with the first call for documents, that doesn't forbid advances by your attorneys to a client?

A. No, I wouldn't say it wouldn't.

Q. And under those rules and regulations for many years it's admitted in your answer of the Brotherhood that advances were made?

A. That's correct, they were.

Q. Now, how did you select Regional Counsel and how do you select Legal Counsel?

A. I would find that if there was a territory that we needed Legal Counsel, we would canvass among our members and other groups as to who was qualified to represent a labor organization in that particular territory.

Q. Well, now, that same Paper 12, which is the answer of the Brotherhood to the request for documents, at Paragraph 21, Mr. Maher says that prior to April 1, '59, and [fol. 277] subsequent thereto, the selection of attorneys as Regional Counsel or as Legal Counsel was made on the basis of their reputation for, (A), integrity; (B), ability; and, (C), specialty of the particular lawyer. Is that correct?

A. Well, I would say—

Q. Is that the basis on which you made your appointments?

A. That is one of the bases—three of the bases that we would use.

Q. Well, are there any others?

A. Yes, I would say that we would want to know the character of the individual attorney in the particular territory, what his background was.

Q. Did you appoint Mr. Clifford Hildebrand?

A. Yes, sir.

Q. When did you appoint him?

A. When Mr. Whitney died, I reappointed him.

Q. You have known him, I believe, for 12 or 15 years, you have said?

A. Yes, sir.

Q. Did you know about the proceedings against him in California under the style of Hildebrand against California State Bar, 225 Pacific (2d) 508, in which there was a censure in 1950?

A. Yes, sir.

Q. Did you know about the consent decree from the [fol. 278] El Paso, Texas, case in which the Brotherhood was a party?

A. Yes, sir.

Q. Now, you had complete control of the defense and you approved of that case and approved the terms of that decree, I believe, did you not?

A. Yes, sir.

Q. Did you remove Mr. Hildebrand on this account?

A. No, sir.

Q. You just took his Texas territory away from him, didn't you?

A. Yes, sir.

Q. And do you ever make investigations of lawyers as to how the Regional Counsel get their business?

A. I have to some extent.

Q. I believe you previously stated that you would be the first one to report any infractions of these things to any Bar Association?

A. That's my intention to do so.

Q. Well, now, while Mr. Hildebrand was involved in that pending California case, he didn't make any contributions to the Legal Aid Department, did he?

A. I wouldn't know. I would say probably he did not. I couldn't say.

Q. You testified once before that he did not, I believe, did you not?

[fol. 279] A. I think that's right, that he did not.

Q. All the others did, though?

A. I think that's true.

Q. And as soon as that proceeding was over, Mr. Hildebrand resumed his contributions in '53 and continued them up until 1958, didn't he?

A. I wouldn't understand that that would be true. I am not so certain as to when he started or when he stopped.

Q. Well, wasn't that brought out in the proceeding of ex rel. Beck?

A. I think that there was some financial interest brought out in that involving Hildebrand, but I couldn't say as to the details.

Q. I hand you what purports to be an exhibit in that proceeding, State ex rel. Beck, in Nebraska, 8 pages—these are photostats—and ask you whether or not you have ever seen those records before?

A. These records, as I recall, are records in the State of Nebraska proceedings—

Q. That is right.

A. —which have now been satisfactorily disposed of. They came to Cleveland and with our permission they went through our books and whatever record they found there was the accurate record that we will have to subscribe to.

Q. Well, I am purporting to say that this is a copy of the [fol. 280] exhibit that was filed there.

A. Yes.

Q. So if that is a copy of that exhibit, that is a correct statement of the records that were given under those circumstances?

A. Yes, sir, that is correct.

Q. I don't want to go into too much of this, Mr. Kennedy, because they speak for themselves, but I call to your attention that the first one here is 1951, in which Mr. Hildebrand's contribution is not listed. In 1953, Mr. Hildebrand is on there as making a contribution. And Mr. Hildebrand is continuously on the subsequent years of '54, '55, '56, '57, and '58 as a contributor?

A. Yes, sir.

Mr. Bowles, Jr.: Would you file that as an exhibit with your testimony, please?

(8-page exhibit from State ex rel. Beck re contributions, marked, "Complainant Exhibit K-4.")

Q. Do you know Mr. Alex S. Dombey?

A. Yes, sir.

Q. He is a resident of Franklin County, Ohio, isn't he, or is he?

A. He is a resident of Columbus, Ohio, wherever that's located in the County. I don't know.

[fol. 281] Q. Did you know of the proceeding against Mr. Dombey in the Franklin County Court of Common Pleas, Number 189,110, in which Mr. Dombey was suspended from August 1, 1954, to July 31, 1955?

A. Yes, sir.

Q. And he was appointed Regional Counsel by you with knowledge of that fact?

A. Yes, sir.

Q. I believe you said you thought he had paid his full debt was the language you used once before?

A. I think that's probably true. I knew that he was an attorney for the AFL and the CIO and all of the other railroad Brotherhoods and that was the contributing factor by which he was appointed.

Q. He is still Legal Counsel now?

A. He is for that particular city.

Q. For Columbus?

A. Columbus, Ohio.

Q. Did you know Mr. Philip Lush?

A. Yes, sir.

Q. You were aware of the fact—I believe you have previously testified—that he had been enjoined in Montana?

A. I think that he was enjoined in Montana as a result of an old firm connection.

[fol. 282] Q. Whatever the reason, he was enjoined?

A. Yes.

Q. He was Regional Counsel then?

A. Yes, sir.

Q. And he still is Legal Counsel now?

A. Not for Montana, but he is a Legal Counsel.

Q. Well, that fact has no bearing on your estimate of his qualifications?

A. No, sir.

Q. Now, Mr. Thomas Davis, you say, is deceased?

A. Yes, sir.

Q. His partners were Eugene Rerat and Carl Yaeger and Philip Lush?

A. Yes, sir.

Q. As a firm they were Regional Counsel, were they not, when they were involved in disciplinary proceedings in Washington State from 1956 and '57?

A. Yes, sir.

Q. And each of those gentlemen, except Mr. Davis, of course, who is deceased, are still Legal Counsel?

A. Yes, sir. However, the case was satisfactorily disposed of.

Q. Do you know the case of In re: McDonald in 282 Northwestern 677, which happened in 1938?

A. I knew what it was, yes.

[fol. 283] Q. Mr. McDonald was a partner of Mr. DeParcq?

A. He was a partner. However, I don't think he had any connection whatsoever with the Brotherhood.

Q. Well, in the first place, in that proceeding he was disbarred for solicitation, was he not?

A. Yes, sir.

Q. And then there was a rehearing which is recorded in 284 Northwestern 288, in 1939, and then in 1940 in the proceeding in 294 Northwestern 461 he was reinstated. I think we should point out both sides of this situation.

A. Well, regardless of the fact, McDonald was never a so-called attorney for the Brotherhood of Railroad Trainmen.

Q. Well, just a few days after that proceeding, he was appointed as Regional Counsel, was he not?

A. I think Mr. Whitney had him on doing special work, but I don't know as he was a Regional Counsel in the handling of legal aid matters.

Q. Are you sure of that, sir?

A. I am not so certain, because that happened before I became President, but he has died a good many years ago, of course.

Q. Yes. Isn't it a fact that he died a Regional Counsel handling injury cases for the Brotherhood?

A. I am not so certain about that. I wouldn't know about that, because his former partner, DeParcq, still is alive [fol. 284] and he was removed.

Q. As soon as he died, Mr. DeParcq was made a Regional Counsel, wasn't he?

A. Mr. DeParcq was made a Regional Counsel and removed as a Regional Counsel.

Q. When was he removed, do you recall?

A. I wouldn't know. Mr. Whitney did that before I became President.

Q. Now, of course, you know and we have already talked about the proceedings against Henslee & Henslee. There isn't any point in going through that again?

A. No, sir, there isn't. However, in the proceedings against Henslee & Henslee in the State of Illinois, they were vindicated by the Court.

Q. Well, it's very obvious that you have not relieved anybody as a result of that?

A. No, sir, I have not, although Mr. Henslee, Sr., has died.

Q. Yes. Now, do you know a Mr. John Donneghan, D-o-n-n-e-g-h-a-n?

A. I can't say as I know who he is.

Q. Well, he was an associate for your Regional Counsel in Syracuse, New York, McElroy, Martin, Young & Dunn.

A. That's possible, although—

Q. Mr. McElroy is now dead?

[fol. 285] A. Mr. McElroy is dead.

Q. And Mr. Donneghan is now your Legal Counsel?

A. Yes, sir.

Q. And he was your Regional Counsel before this change?

A. Yes, sir.

Q. Did you know Mr. Joseph G. McGlynn?

A. McGlynn? Yes, sir.

Q. He was your Regional Counsel in East St. Louis, I believe?

A. Yes, sir.

Q. Did you reappoint him?

A. Yes, sir.

Q. Did you know that he had been enjoined from soliciting cases in North Carolina and transporting claimants to East St. Louis?

A. I didn't know anything about that.

Q. You didn't know about that proceeding?

A. No.

Q. That was in the Superior Court of Buncombe County, North Carolina, and the style of it was State ex rel somebody who was the attorney general or what-not against Hice and Joseph B. McGlynn and others.

A. I see. I wouldn't know. That probably happened a good many years ago.

Q. It happened the year before you became president.

A. I wouldn't remember.

[fol. 286] Q. The decree was entered on May 12, 1948, and he was enjoined from practicing in North Carolina, from advertising in North Carolina, from soliciting in North Carolina, and from transporting claimants from North Carolina to East St. Louis for conferences. Now, is he dead?

Mr. Henslee: Yes.

A. The McGlynn that you are talking about is dead.

Q. Joseph B.?

A. Yes, sir, he is dead.

Q. Now, you say that you investigate these people, particularly for character?

A. Yes, sir.

Q. Did you investigate about Mr. McGlynn?

A. No, I didn't, because that happened before I became President.

Q. That happened before?

A. Yes.

Q. But he survived and was a Regional Counsel while you were President?

A. That's true.

Q. And you had to reappoint him?

A. I did.

Q. And what investigation did you make of him to ascertain about this situation, any?

A. Probably at that time I probably called his attention [fol. 287] to the violation, which happened hundreds of miles away from East St. Louis, Illinois, and told him that we wouldn't countenance that.

Q. In other words, he must confine his activities to a narrower location?

A. No, I told him he must confine his activities to the law and the policy of the Brotherhood as prescribed to by the President.

Q. Now, did you consider all of these men that I have named met the standards that were set out by Mr. Maher in the Brotherhood's answer to the request? That's Paragraph 21 of that Paper 12.

A. Yes, I did.

Q. Now, new appointments that you have made, I understand that it's your general policy to publish those appointments in the Trainman News?

A. I think that we have done that.

Q. Well, I believe you testified before that it was your general policy—

A. Yes.

Q. —to put their picture in there and their background and also their qualifications?

A. Well, I wouldn't see anything wrong with that, putting the picture of an attorney in a paper and saying who he is.

Q. You have on October 1, 1960, appointed Mr. Robert E. [fol. 288] McGlynn as the Legal Counsel of the Brotherhood of Railroad Trainmen for East St. Louis, Illinois, and you appointed him on October 1, 1960, did you not?

A. Yes, sir.

Q. Now, to ask you a little about who he is, he is the nephew of Mr. Dan McGlynn, is he not?

A. Yes, sir.

Q. He is the nephew of Joseph B. McGlynn?

A. Yes, sir.

Q. I get all this information from the Trainman News.

A. That's good. We want you to read it.

Q. He is the son of Robert E. McGlynn?

A. Yes, sir.

Q. And he was a partner of Dan McGlynn, who was the former Regional Counsel?

A. Yes, sir.

Mr. Henslee: He still is.

Q. Now, all of that detail, that is in the Exhibit Kennedy Number 2, I believe, on the second page?

A. Yes.

Q. There is his picture and there is the article about him?

A. Yes, that shows the Brotherhood has no hidden secrets, that we like to tell everybody who our attorneys are.

Q. Fine, sir. Could it be possible that it was put in there so that members would know to whom to apply?

[fol. 289] A. Oh, that's up to them. It was put in there for the purpose of letting everybody know who he is.

Q. Now, you admit, then, that it shows it was put in there with the idea that they might employ him?

A. Oh, they could if they wanted to. They do anyway, so what's the difference.

Q. Oh, they would? I see. Now, then, is the custom for Legal Counsel to appear at conventions and what-not and discuss legal aid?

A. No, I would say that that's not the—

Q. I am not saying there is anything wrong with that, sir. I go around to law meetings and talk about various things.

A. No, it isn't the custom. I don't recall of them appearing before conventions and making any discussion other than the general counsel.

Q. I want to call your attention to an article that appeared in the Trainman News on April 10, 1961, in that connection. This happens to be a photostat about it. Columbus, Ohio, a meeting of Lodge 72 and a party that they had, and in the course of that report this is said. "Keith E. Roberts, attorney in the legal counsel firm of Henslee & Henslee, delivered a brief talk on legal aid. He was accompanied by Bob Moss, BRT Investigator."

A. Yes.

Q. Would you have any occasion to doubt that that is a [fol. 296] fact?

Mr. Bowles, Jr.: Don't talk to the witness, if you don't mind. I'd rather have his testimony than yours, Mr. Henslee.

Mr. Henslee: All right.

A. You asked the question that I properly answered before about whether our attorneys attended conventions. Now, I told you that our attorneys did not attend conventions and I still hold that to be a fact, because we hold a

convention every four years and we have no attorneys appearing before the 1100 delegates of our Brotherhood. Now, what you are referring to here is not a convention. It's a subordinate lodge meeting of a small group of members in a particular lodge, in a particular city, for a particular purpose. The lodge may have been 50 years old or 60 years old or 70 years old and they invite individuals to their particular lodge beyond the control of the President. And if this is a statement from Trainman News, I assume it's correct. I assume it's correct that they were there.

Q. Now, you and I are talking about two different things overlapping. The reference I had before to conventions was in relation to a totally different subject and I think you are quite right, I just don't know, sir, but the thing I am addressing my attention to, I use conventions in the form of meetings or any kind of a thing—

[fol. 291] A. Yes.

Q. —and the reason I ask you that is to point out that there are Brotherhood of Railroad Trainmen investigators now and we have all agreed that they carry cards on occasions.

A. Yes, sir.

Q. Now, here is an occasion—and you would have no reason to dispute the accuracy of it, I take it—in which a lawyer who is an associate in a firm of one of your Legal Counsel and one of those investigators both undertook to go to a lodge meeting and explain how this thing worked.

A. I understand.

Mr. Stallard: Counsel for defendant objects to this line of testimony inasmuch as counsel for the complainant is arguing his case for the Court, and on the further ground it has nothing to do with the issues at bar.

Q. Mr. Kennedy, you would assume from that article that what it set out there is correct?

A. I have every reason to believe that that's a correct statement.

Mr. Bowles, Jr.: Would you file that, please, as an exhibit with your testimony?

Mr. Stallard: Counsel objects to this being filed, because [fol. 292] it has nothing to do with the issues at bar. It re-

fers to a meeting of a lodge which was held in Columbus, Ohio, April 10, 1961. And on the further ground that the President of the Railroad Trainmen says that he cannot control what might happen in a local autonomous lodge.

(Article from Trainman News, 4/10/61, marked, "Complainant Exhibit K-5.")

Q. As President of the Brotherhood and defendant in this proceeding, do you concede that what Mr. Stallard has just said is correct, that you cannot control the operation of this department?

A. What Mr. Stallard said is correct to the extent that we have more than 1100 local lodges within the Brotherhood. They hold their autonomous rights under our Constitution to have their meetings, their banquets, their birthday parties or whatever they may call them. They frequently call in attorneys that have no relationship whatsoever with the Brotherhood of Railroad Trainmen. They are local people. They frequently call in the attorney generals of the State. They frequently call in the County attorneys. They frequently call in the City attorneys. We have no control over who they call or how they call them or what kind of a meeting takes place. That's their business exclusively.

Mr. Henslee: I would like to at this point interpose also [fol. 293] that Mr. Stallard did not say that the President did not control the department, he said they could not control the local lodges.

Is that correct?

Mr. Stallard: Yes.

Q. The local lodges Secretaries are in effect your investigators now. Now, are you willing to say you can't control them?

A. I can control them, yes, sir.

Q. How do you do that?

A. By writing them a letter.

Q. Suppose they don't obey it?

A. Don't obey it?

Q. Yes.

A. Then I could remove them from office.

Q. Can you yourself at the Grand Lodge remove a Secretary from a local lodge?

A. Yes, sir, I can do that.

Q. Under what part of your Constitution do you have that power?

A. We have a part of the Constitution that if he violates any provision of our Constitution or law, we can remove him, but subject to a trial, of course.

Q. But isn't it that the local lodge has to remove him, [fol. 294] doesn't it?

A. The local lodge—it all depends on what the violation is. The local lodge would have a jurisdiction over the individual local member, but it all depends on what this violation happened to be.

Q. Well, suppose it was a violation of the Illinois decision?

A. Then I would have a right to prefer charges against him and remove him.

Q. You would have a right to prefer charges against him?

A. Yes.

Q. And if the local lodge decided he wasn't guilty, you couldn't remove him, even though you thought he was?

A. We could remove him, even to the extent of removing the charter of the lodge, if we found that was necessary.

Q. The other point which you mentioned about conventions the time I asked you about that before, I was talking about contributions of former Regional Counsel, based on the time involved at a convention that legal aid matters were discussed, as a means of finishing out what this contribution was back under the old system. That's what I was talking about.

A. Oh, I see.

Q. Now, we agreed, I believe, that was done?

A. That is right, we did.

[fol. 295] Q. Now, you have said, I believe, and you contend that you have no control now over what the charges made by Legal Counsel to members are in handling personal injury cases. You as head—

A. Oh, you mean—I see. When you are talking about charges, you mean—

Q. Money charges.

A. You are talking about money?

Q. Yes.

A. No.

Q. That's the main object of everybody in this day and time.

A. No, we have no control whatsoever over what that may be.

Q. No control over that?

A. No, sir.

Q. Let's take Mr. Savage as just an instance, because he happens to be in the territory that we are interested in. If Mr. Savage persistently charged the members that he represented in their personal injury suits in FELA cases 50 percent, what would you say?

A. I would say that's exorbitant.

Q. Would you do anything more than say that?

A. Yes, I certainly would.

Q. What would you do?

A. I would probably remove him from his position as an attorney for the Brotherhood.

[fol. 296] Q. Then you do have a control over him, don't you, right at this moment?

A. At least to that extent.

Q. Yes. And at what point would you remove him if he charged more than a certain percent?

A. Well, that would be a question of policy as to what the facts were. It all depends on what the facts are.

Q. Do you have any information about what percentages are now charged by your Legal Counsel?

A. No, I have none whatever.

Q. Well, if they charged more than 25 percent, would you continue people who persisted in doing that?

A. It all depends on circumstances, I would say.

Q. Well, then you would retain the privilege in appointing a Legal Counsel of firing him at any time that he charged more than you thought was proper?

A. I would say that's correct.

Q. Do you have any understanding with them to that effect?

A. No, sir, I have none whatever.

Q. I want very briefly, Mr. Kennedy, just to inquire as to your familiarity with these proceedings, and I hope I can do it as briefly and quickly as possible. These are proceedings in the law books in which the Brotherhood of Railroad Trainmen or your Regional Counsel have been involved. I ask you first of all, I think you have already [fol. 297] said that you knew about the one that was a petition of a committee under Rule 28 of the Cleveland Bar Association, cited in 15 Ohio Law Abstract 106 in 1933. That was the first one, I believe, and the firm of Newcomb, Newcomb & Nord was involved. We have talked about that before?

A. Yes, sir.

Q. You know about that back history?

A. Yes, sir.

Q. The second one I think we mentioned was Dworken against Brotherhood of Railroad Trainmen Grand Lodge in Cuyahoga County, Ohio, in '32. We have mentioned that one.

A. Yes, sir.

Q. The third case I want to bring to your attention is Ryan against Pennsylvania Railroad Company in 268 Illinois Appeals 364. That was in 1932. The case involving, I believe, Mr. Ryan's right to recover an attorney's lien and he was allowed to recover the lien. You know about that case? I don't mean as a lawyer, sir, but you have heard about it?

A. No, I probably haven't. See, these cases that you are bringing up happened nearly 30 years ago. It's difficult for me to say that I know all about it, because I don't. I may have read about it in the records.

Q. I don't mean to imply that you know all about it or the details, I do mean to imply this, however, that you are the President of this Brotherhood; you are directly respon- [fol. 298] sible for the manner in which its present Department of Legal Counsel is conducted and, were from '49 until '59 directly responsible and in control of its Legal Aid Department. Now, in the course of your investigations of the history of that department and its methods of operation, and so forth and on, I do ask you as regards to your familiarity in that study. Now, are you familiar with the

case of In re O'Neil, which was in 5 Federal Supplement 465, in the District Court of the Eastern District of New York in 1933?

A. No, sir, I never heard of that.

Q. Did you ever hear of that case?

A. No, sir.

Q. Did you ever have occasion to read in that case in which the same counsel, Mr. Ryan, was censured and criticized? This I quote, "Cook County, Illinois, may not require adherence to canons of ethics of the American and New York Bar Association," end of quote, "adopted by this Court as standards for professional conduct."

A. I think that that's true and, if I am not mistaken, that Ryan was removed by my predecessor, Mr. Whitney, because of that particular controversy.

Q. Well, that was another warning to your predecessor, Mr. Whitney, as to what was going on?

A. And he removed that man, as I remember.

Q. Now, Young against Gulf Mobile & Ohio Railroad in [fol. 299] the United States District Court for the Eastern District of Missouri, decided in 1946, involved Mr. DeParcq, a question of comity as to whether Mr. DeParcq would be allowed to appear in the Federal Court there.

A. And Mr. DeParcq was eventually removed.

Q. Mr. DeParcq was allowed, however, to appear in that case by putting these very exhibits that we have mentioned into the record, I believe, and testified just how this department worked and testified about Mr. Whitney's letters and said that all fee splitting had ended?

A. That is right, he was eventually removed by Mr. Whitney.

Q. In Reynolds against Gulf Mobile & Ohio and Texas Pacific Railroad in the District Court for the Eastern District of Tennessee in 1946 there was an action to resist the appearance of Mr. Joseph B. McGlynn, the Regional Counsel, and there again it was said that there was no fee splitting. Do you know about that case?

A. No, sir, I do not.

Mr. Stallard: Counsel for the defendant objects to questioning the witness on these cases, of course. It's a question

of law what happened in those cases and the cases can be introduced and that would be the best evidence.

Mr. Bowles, Jr.: I am only asking whether or not this witness has any familiarity with them as head of this [fol. 300] department in the light of his investigations into Regional Counsel and the past history of this department.

Q. Now, the other is the State of North Carolina against Hice and McGlynn and others in Buncombe County, 1948. We have already referred to that situation. I don't recall whether you said you knew about that situation or not where Mr. McGlynn was enjoined in North Carolina?

A. No, I don't. I had never heard of that.

Q. Now, you said you did know, I believe, about the Hildebrand case against the California State Bar in 1950?

A. I think that I did know something about that case.

Q. That was a disciplinary proceeding in which Mr. Hildebrand was censured, reported in 36 Cal. (2) 504, 225 Pac. (2) 508. I believe you said you also knew about the State Bar of Texas against Hildebrand in the District Court of El Paso County in 1952—

A. Yes, sir.

Q. —where Mr. Hildebrand was enjoined. The case of Atchison, Topeka & Santa Fe Railroad Company against Jackson in 1956, reported in 235 Fed. (2) 390, involving the firm of Davis, Rerat, Yaeger & Lush. There was an objection in that case to the appearance and they allowed to appear, and there was a dissenting opinion in which the solicitation by Mr. Maroney was criticized. Did you ever [fol. 301] hear or know of that opinion?

A. No, I have never heard of that.

Q. The next one I want to call to your attention is In re Brotherhood of Railroad Trainmen, 150 N.C. (2d) 163, 13 Ill. (2d) 391, 1958, in which the judgment was handed down May 23, '58. Now, that's the Illinois decision that you through Mr. Henslee initiated?

A. Yes, sir.

Q. Now, you have already said that you knew about State ex rel. Beck against Lush, Clinlenbeard, and various lodges in Nebraska?

A. Yes, sir.

Q. And that was a consent decree, I believe, in which an injunction was entered by the Supreme Court of Nebraska on May 6, 1960?

A. That was settled satisfactorily to the Attorney General.

Q. You supervised that?

A. Yes, sir.

Q. Now, Iowa State Bar Association against Davis, Rerat, Yaeger & Lush and Clinlenbeard in the District Court of Iowa, Pottawattamie County, Council Bluffs, Iowa, that one is pending, I believe, is it not?

A. No, sir, it's disposed of.

Q. How was it disposed of?

A. To the satisfaction of the Attorney General of Iowa.

[fol. 302] Q. Was a consent decree entered?

A. Yes, sir.

Q. That was begun in 1955?

A. Yes, sir.

Q. What did the Brotherhood agree to do, desist from doing what?

A. The stipulation spoke for itself. It was similar to what they did in Nebraska.

Q. In Montana Bar Association against Davis, Rerat, Yaeger & Lush, in 1958, District Court of the County of Yellowstone, in the 13th Judicial District, involving a charge of solicitation, is that one pending?

A. Yes, sir.

Q. In Hulse against Brotherhood of Railroad Trainmen, Kennedy, Maher, Lush, and McGlynn in the Supreme Court of Missouri, there was a consent decree and an injunction entered, I believe, was there not?

A. It was satisfactorily disposed of.

Q. There was an injunction?

A. Yes, sir.

Q. In the State of Oklahoma against Brotherhood of Railroad Trainmen, Kennedy, Maher, Payne Ratner, Sr., and Payne Ratner, Jr., both of whom were Regional Counsel at the time, I believe, the Supreme Court of Oklahoma entered a consent decree on April 26, 1960, in which there was [fol. 303] an injunction, I believe, is that correct?

A. No, I don't think that is correct, as I recall.

Q. Do you know about the proceeding?

A. I understand about the proceedings, but I think that the proceedings against the Brotherhood of Railroad Trainmen was dropped.

Q. Well, that proceeding will speak for itself, of course.

A. Yes, sir.

Q. Well, if there was an injunction entered, do you know against whom it was?

A. I think it was against the Legal Counsel, but not against the Brotherhood.

Q. Are they still Legal Counsel?

A. Yes, sir.

Q. The State of Oklahoma against Charles E. Wilson, Regional Investigator, and an order of the District Court of Muskogee County, Oklahoma, on December 23, 1950, enjoined for soliciting, do you know about that proceeding?

A. No, I don't recall that.

Q. Do you know about the agreement between Mr. Savage and the West Virginia Bar entered on June 10, 1958?

A. Yes, sir.

Q. And do I understand that you had undertaken to supervise that agreement?

A. I told Mr. Savage when he brought the matter to my [fol. 304] attention that I thought that he should meet with the Bar Association and those qualified.

Q. Did you look at the agreement and approve it before it was entered?

A. No, I don't think I did.

Q. Would you recognize it if you saw a copy of it?

A. Oh, I think I would.

Q. Would you have any objection to filing it as an exhibit with your testimony?

A. I have got no objection, because it is an exhibit—or it is an agreement that was made by the Brotherhood.

Q. The reason I ask you about that is that it was my understanding—I don't know whether I am correct or not—that Mr. Savage and the West Virginia Bar entered into some stipulation about that being kept confidential and that the West Virginia Bar published it or did something

with it—anyhow, it became public property—and I did not want to violate any confidence.

A. I don't see how you would keep a document like that confidential.

Q. I did not think so.

A. No, I didn't intend to keep it that way.

Mr. Stallard: Counsel for defendant objects to the introduction of this instrument and states that he is the counsel for the Railroad Brotherhood and that is the reason [fol. 305] he objects to the introduction of a mimeographed instrument purported to be some contract entered into by Savage on the 10th of June, 1958, which was prior to the Illinois decision, or at least the effectiveness of the decision.

Mr. Bowles, Jr.: Counsel for the complainant says that from the testimony of the witness it is obvious that it is admissible.

If you will please mark that.

(Agreement, 6/10/58, between West Virginia State Bar and Bernard M. Savage, marked, "Complainant Exhibit K-6.")

Q. Are you familiar with the case of State Bar of Michigan against the Brotherhood of Railroad Trainmen and others in the Circuit Court of Jackson County in Chancery?

A. Yes, I understand there is such a case pending.

Q. That was instituted, I believe, in January of 1959. I am not sure of my date about that.

A. I think that's about correct.

Q. I am sorry I don't have the proceedings themselves before me at the moment. I understand that the complaint was amended and that Messrs. Edward B. Henslee, Jr., Martin K. Henslee, and John J. Naughton were added as additional parties as successors to E. B. Henslee, Sr. Do [fol. 306] you know about that?

A. No, I wouldn't know a thing about that.

Q. That is pending, is it not?

A. Yes, sir.

Q. And a hearing in that matter is set, I believe, for June 15, 1961?

A. I hope so.

Q. Is that correct?

A. I don't know, but I hope it is correct, because I want it over with as quickly as possible.

Q. Well, I believe that the charge is unauthorized practice of law and solicitation in Michigan. Do you know about that?

A. No, I don't.

Q. Well, have you had any familiarity with that as head of this department?

A. No.

Q. You have not discussed it with your counsel?

A. No, not to any great extent. I knew that there was such a thing pending, but apparently those in charge, the Bar Association or whoever is bringing that action, didn't seem to want to get the matter processed as quickly as I thought they should, and I thought that the matter should have been disposed of over a year ago, and why it isn't I wouldn't know.

[fol. 307] Q. As a matter of fact, Mr. Kennedy, the Michigan Bar would not accept a consent decree tendered, isn't that correct?

A. I presume that's one of the reasons why. I have no idea what's holding it up.

Q. I call to your attention this case amongst the lot of them. I think you said once before that you didn't know much about it. You know more about it now, don't you?

A. I know about it to this extent: that they brought this action against Mr. Henslee and that—

Q. I am talking about this case, this Virginia case.

A. Oh, the Virginia case? I thought you were talking about the Michigan case.

Q. No, I had passed that.

A. They kept the action against Mr. Henslee, who has been dead more than two years, and just amended it recently. Why I don't know. Why would they keep an action against a man that has died two years ago when they could have very properly changed it?

Q. I had gotten down to this case and called your attention to the fact that you had said in a previous deposition that you didn't know about this case and I am asking you whether you know more about it now?

A. I do. I think your questions were highly enlightening and it helped me considerably.

[fol. 308] Q. Now, I have to ask you this for the record, sir. Have you ever accepted any gifts or payments of gratuities or any other nature of payment from any Regional or Legal Counsel?

A. No, sir, I have not.

Q. Either before April 1, 1959, or after?

A. No, sir.

Q. Has any other officer of your Brotherhood ever accepted such a gift, so far as you know?

A. Not to my knowledge.

Q. Now, you are very familiar with the operation, with the way this thing is done, and you have displayed that in your testimony, sir? I believe your son, Mr. R. P. (Bud) Kennedy, was employed by Davis, Rerat, Yaeger & Lush, was he not?

A. That is right.

Q. He went there as an associate as soon as he got out of law school, I think, didn't he?

A. Yes, shortly after.

Q. A fortunate young man to find a place to go.

A. Yes, sir.

Q. It's right hard to find places. The Minneapolis directory for 1959 lists Mr. R. P. Kennedy, your son, as office manager for Davis, Rerat, Yaeger & Lush, I believe?

A. That is correct.

[fol. 309] Q. We have already agreed that firm was dissolved into three firms on December the 31st, '55, I believe?

A. I think that's about right.

Q. And your son is now with Davis & Lush in the Baker Building in Minneapolis?

A. He is with Mr. Lush. Mr. Davis has long since died.

Q. But the firm is still Davis & Lush, is it not?

A. I presume it is.

Q. I don't know how they do in other places, but a dead man can still appear on a letterhead if you show when he died.

A. I think that's a very unfortunate situation, but I guess they can do it.

Q. Now, you have an office on the same floor?

A. Yes, sir; a private office.

Q. And when you go out, you put a notice on the door to deliver mail at Davis & Lush?

A. To my son.

Q. To your son? Now, I hand you, Mr. Kennedy, another undated paper and ask you whether you know anything about it? It is headed, "Authentic information concerning the rights of our members under the 'Federal Employers' Liability Act.'"

And while he is reading it, sir, I want to say to you that we propose to show that appeared on the bulletin board [fol. 310] in the Union Pacific yards, I think in Chicago, during April of 1961.

A. No, that wouldn't be correct. There is no such a yard in Chicago.

Q. There is not?

A. No, sir.

Q. Then in a Union Pacific yard some place.

A. The Union Pacific doesn't come within 500 miles of Chicago.

Q. That I feared was a fact, sir, but do you know anything about that paper?

A. No, I would say that that probably has been—if it's similar to what I have seen, I would say that that has been in existence—I would say that that's been in existence for 30 years.

Q. Well, do you know who drew it up or who prepared it?

A. No, I have no idea. That was drawn up long before I became President and reproduced by people who are not even members of our own Brotherhood. You see—

Q. Do you put out any such thing as that now—

A. No, sir.

Q. —from your Legal Aid Department?

A. We do not.

Q. Or the Department of Legal Counsel?

A. We do not. You see, other groups put these out. [fol. 311] Engineers come under the law, firemen come

under the law, conductors. Other organizations probably put this out. It doesn't necessarily mean the Brotherhood of Railroad Trainmen.

Q. Well, I was just inquiring about it. But I understand from you that it was prepared in earlier years by the Brotherhood of Railroad Trainmen?

A. It might have been, but we have no assurance that it was, because I would say that that has been prepared a good many years ago, long before I became President.

Q. Well, what you have said is that it might have been prepared by your Brotherhood?

A. It might have been. I wouldn't say.

Q. It refers to the Brotherhood. Is there any other organization known as the Brotherhood?

A. Yes, sir, the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Brotherhood of Maintenance Workers, the Brotherhood of Railroad Signalmen. We have got lots of Brotherhoods.

Q. Most of them are titled Brotherhoods, are they not?

A. Yes, that is correct. And they all come under the Federal Employers' Liability Act, too.

Q. Yes, of course. Now, this thing in Point 10 on Page 4—

Mr. Stallard: Counsel for the defendant must object to [fol. 312] this because it's unidentified as having anything to do with the case at bar or even that the defendant knows anything about it. It's a paper undated and unsigned and the examination is going far afield.

Mr. Bowles, Jr.: The purpose of my question that I was about to ask is to seek to identify it, if possible.

Q. In Point 10 on Page 4, it says, "Of special interest to switchmen, conductors and brakemen are the so-called Safety Appliance Acts." Now, switchmen and brakemen are particularly in your Brotherhood, are they not?

A. No, sir, they are not. The Switchmen's Union of North America represents a great many switchmen in the United States over which we have no control whatsoever.

Q. Don't you have most of the switchmen in your Brotherhood?

A. We have a large, substantial group, but we don't have them all.

Q. What is substantially the job activity that your Brotherhood covers?

A. Well, we cover a group of organizations, some of which are under the Federal Employers' Liability Act and others are not.

Q. Well, from your examination of this paper, would you be able to say whether or not with any degree of cer- [fol. 313] tainty that your organization had anything to do with this?

A. No, sir, I'd say that that isn't signed, it isn't dated. I'd have to take the position that we know nothing about it.

Q. Well, I call your attention on Page 2 of it to Point 2, where it says, "The Brotherhood of Railroad Trainmen has appointed certain attorneys as Regional Counsel of the Brotherhood who are skilled under the Federal Employers' Liability Act and with whom members and their families are entitled to consult regarding their rights. The Brotherhood has a direct interest in the welfare of its members and certainly one of its prime purposes is to take care of them when they are injured, or take care of their families when they are killed." Would that language indicate to you what Brotherhood they are talking about?

A. No, not necessarily, because they are talking about members who are killed and injured under the provisions of the Federal Employers' Liability Act and that could be any one of the Brotherhoods.

Q. Now, I want to point to the last paragraph on Page 5. "The foregoing is submitted to the members of the Brotherhood of Railroad Trainmen with the hopes that it will answer some of the many questions which confront members and officers of the Lodge when injuries or death result to members. It is furnished with the hope that it might assist the officers and members in protecting the [fol. 314] rights of injured Brothers and their families." Would you now say whether or not that was identified with the Brotherhood of Railroad Trainmen?

A. No, sir, I'd still say it was not necessarily a member of the Brotherhood of Railroad Trainmen, because that would apply to any one of the Railroad Brotherhoods.

Q. Well, it's in capitals. Capital B, capital R, capital T.

A. Anything that would be put out by the Brotherhood of Railroad Trainmen that's of an official capacity would be signed by the President. That's not signed. I have no idea who put that together.

Q. Well, you don't know anything about it?

A. No, sir, that's the first time I have ever seen it.

Mr. Bowles, Jr.: For identification, please, I would ask you to mark that as an exhibit with your testimony.

Mr. Stallard: Counsel for the defendant objects to this unsigned, undated paper, which could be anywhere from five to thirty years of age. I would say it's certainly not material to the issues in this case.

(8-page document entitled, "Authentic Information Concerning the Rights of our Members under the Federal [fol. 315] Employers' Liability Act," marked, "Complainant Exhibit K-7.")

Mr. Stallard: The exhibit has not properly been identified by the witness and therefore should not be an exhibit in this case.

Q. Mr. Kennedy, with regard to this paper which we have just been talking about, in essence what I read to you is one of the purposes of your Department of Legal Counsel, isn't it, to look after injured members when they are injured or killed?

A. That's in accordance with our policy, yes.

Q. Now, in Southern Pacific against Hildebrand, the California case, the firm there, I believe, was Hildebrand, Bills & McLeod, is that right?

A. I am not sure what the title is.

Q. I mean that is the firm, isn't it?

A. I presume that is their official title.

Q. And that case, is that pending, do you happen to know?

A. Yes, I think there is a case pending.

Q. There is a case pending against Mr. Hildebrand in California?

A. Yes, there is. It's not caused by any Bar Association, however.

Q. I understand. It's Southern Pacific against Hildebrand?

A. And the Santa Fe.

Q. Well, the Santa Fe is a cross complainant?

[fol. 316] A. I wouldn't know how they got into it, but they don't like the way Mr. Hildebrand operates.

Q. That is quite obvious from the proceedings. Now, Mr. Fred J. Bills and Mr. Charles C. McLeod and Mr. Clifford Hildebrand are your Regional Counsel, I believe?

A. No, sir, they are not.

Q. I don't mean to say Regional Counsel, your Legal Counsel under the new setup?

A. No, sir, they are not.

Q. Mr. Hildebrand is not?

A. Mr. Hildebrand is, but he is the only one that is.

Q. He is the one, but that is his firm? Those are his partners?

A. They may be partners and they may be parts of his firm, but they are not recognized by the Brotherhood other than Mr. Hildebrand himself.

Q. Do you know whether or not it is a fact that each of those gentlemen relied on their constitutional privilege to refuse to testify in that case on the ground of self-incrimination?

A. I have heard that, but nobody has officially called this to my attention.

Q. Well, if that would be true, would that affect you in continuing Mr. Hildebrand's appointment?

A. It might have quite an effect on whether or not I [fol. 317] would continue him.

Q. But you haven't gotten rid of him yet?

A. Officially it hasn't been called to my attention. Eventually I presume it will.

Q. Now, these Secretaries of the Grand Lodge that are now required to make investigations, those investigations, I understand, are financed by the Grand Lodge?

A. Yes, sir.

Q. Now, how do you do that?

A. Take it out of the general fund of the Brotherhood.

Q. Well, I mean how do you do it, just pay them per piece or by salary or what?

A. Yes. Well, it all depends on who they are. If I take them out of my office in Cleveland, Ohio, why, of course, they are on a salary. They are men that are employed in the headquarters.

Q. How many men do you have like that now?

A. I think there are about four working in the office.

Q. Are they assigned to any specific territories?

A. No, they are not.

Q. Who are those men?

A. I would say Mr. Maher is the Chief Clerk, and he has, I think, two assistants. I am not sure as to just who they are right now.

Q. You don't know the names of your investigators?

[fol. 318] A. I would say that Mr. Maher is the man that would do the investigating. Now, if he wouldn't be available, then we would use one of the others. I forget—

Q. Well, would Mr. Maher go to California to make an investigation?

A. Yes, he would go any place I sent him to.

Q. He, I understand, is ill?

A. Yes.

Q. In the hospital?

A. No, he is not in the hospital.

Q. How is he getting along?

A. He is convalescing at his home in Danville, Illinois.

Q. Do you think he will be available to testify in this case at some future time?

A. I doubt it, because he had a severe heart attack and I doubt whether he can testify or whether the doctor will permit him to.

Q. Who is running the office now in his place?

A. We just have a routine clerk who is just handling it until Mr. Maher's physical condition is normal.

Q. Well, do you have any records now of what payments have been made for these investigations since April of '61?

A. Since April of '61?

Q. I beg your pardon, since April of '59. That note was made late at night.

[fol. 319] A. Yes, I think that we would have records for money paid out as a result of investigations.

Q. Would they be available if we should find we would like to have them?

A. Yes, I think they would. Mr. Maher has made some investigations himself.

Q. Now, I understand that under your present plan that the member gets the results of these investigations free if he hires the Legal Counsel?

A. No, that isn't correct. They would get it free regardless of whether they hire the Legal Counsel.

Q. Well, now, if an injured member doesn't employ the Legal Counsel, then he has to pay for it, doesn't he?

A. No, he does not.

Q. Haven't you so testified before?

A. There may have been a time when we felt that he should pay for it, but we have discarded that theory and now we would give him the results of our investigation without cost.

Q. Now, if he hires somebody that is not a Legal Counsel, what are the conditions, if any, upon which he can have that?

A. He could still have it, but we would give that to him with advice to hire a competent, qualified individual that would protect his case.

[fol. 320] Q. Now, he would get that or not depending on the reputation with labor of the lawyer he employed, isn't that a fact?

A. No, sir. Well, I would say that if we had a record of some unscrupulous individual that we knew was taking advantage of injured railroad employees, we certainly wouldn't recommend that he give that result of that investigation to such an attorney, but if this man had a reputation of being fair and reasonable, we have no objection to giving it to anybody.

Q. Well, you do give it or withhold it depending upon your opinion of that lawyer?

A. Yes, I think we would.

Q. You have said, for example, I believe, in a prior deposition that whether the member got the benefit of this investigation would depend on whether the lawyer he hired was in good standing with labor? If he was, he could have it, and if he wasn't, he couldn't?

A. I would say it would be dependent upon whether he was in good standing with labor and in good standing with the Bar Association.

Q. You also said before, I believe, and I quote, "If he were some bird antagonistic to labor, the price would be very high. I would say that."

A. If he was antagonistic to labor and we felt that he [fol. 321] wasn't going to give the individual that had been killed or injured a square deal, we wouldn't give it to him at all.

Q. Well, it all comes down, then, to the fact that these investigations now made by your Local Secretaries of lodges, who are now performing the functions of the old Regional Investigator, that are sent on to the lodge, that if a member requests that, whether he can have it or not at all depends on your opinion of the lawyer that he employs?

A. Not necessarily. He wouldn't have to employ a Legal Counsel for the Brotherhood. We would still give it to him and he could use any—

Q. Providing you approved that lawyer?

A. I would want to know that he gave it to a competent, qualified attorney. And that would be especially true if it was a widow, because so many of these attorneys have taken advantage of widows over my 50 years' experience in the Brotherhood that I certainly wouldn't want a widow to step into a situation where she was going to lose from 50 to 60 percent of what she is entitled to under equity.

Q. Irrespective of your reasons, now, Mr. Kennedy, you do reserve control as to whether you will or will not give out this information to your members which the Brotherhood Investigators have gotten?

A. No, sir, that's not true. In the first place, the investigation is made, as I told you previously, for [fol. 322] statistical purposes. We want to know why the man got killed. We want to know how he got killed. We

want to know the region in which he got killed. We use that in Washington for statistical reasons. Now, then, we also will provide the individual member of our Brotherhood, if he is in good standing, with a copy of that proceeding, and he can use our Regional Counsel or he can use any qualified attorney that he may select to handle that case for him. All he has got to do is to write in and tell us what he intends to do with those papers.

Q. But I am asking you now whether he can get them or not?

A. Yes, sir, he can get them.

Q. Well, I call your attention to your testimony in the proceeding in the State of California, County of Los Angeles, in the Superior Court of the State of California, in and for the County of Los Angeles, in Southern Pacific Company, a corporation, plaintiff, against Clifton Hildebrand and others, defendants. W. P. Kennedy, individually, and in a representative capacity for and on behalf of the Brotherhood of Railroad Trainmen, an international labor organization, its officers and members, Number 727 273, deposition given by you at 1:30 o'clock, P.M., Wednesday, October 5, 1960, at Suite 810, 139 North Clark Street, Chicago, Illinois, before Irving Ross, a notary public in and for the County of Cook, State of [fol. 323] Illinois, pursuant to stipulation, and filed in that proceeding. Now, you were asked with regard to these reports this question: "And these reports will be retained by the Grand Lodge, and supplied only to members, upon their request?" To that question you answered this, did you not, "To the members, upon their request"?

A. Yes, sir.

Q. Then you were asked, "And an injured member, who employs one of the Brotherhood's Legal Counsel, will be supplied this information without costs? You answered that question by saying, "That is right"?

A. Yes, sir.

Q. "If they ask for it, they can get the service without cost"?

A. Yes, sir.

Q. "Yes. And as to members who employ counsel other than legal counsel designated by the Brotherhood, some small charge will be made to them?"

"Answer. I don't know as to whether I would say that. It depends upon the circumstances. We may have a Legal Counsel that would have a territory that would be a thousand miles away. For various reasons, somebody would want to retain a local counsel, for all intents and purposes, that had a good reputation. We would furnish that information to them free, without asking them to pay for that [fol. 324] service. Why? Because it would be a convenience to the individual member."

Now, this question:

"Question: For instance, if the member resided, and his accident occurred in the city in which Legal Counsel retained his office. If he retained a lawyer, other than Legal Counsel, in that circumstance, some small charge would be made?"

Did you not answer, "I don't know that it would. If he was an attorney in good standing with labor, he could have that information. If he was some bird antagonistic to labor, the price would be very high. I will say that."

A. If he was antagonistic to labor, I am not so sure that that statement wouldn't be correct, because he wouldn't have any particular sentiment nor neither would he feel that he was protecting this individual that belonged to a labor organization in the same way that I think he should be protected.

Q. Who would decide that fact, you or the member?

A. I think possibly the member would have to decide that himself or the widow; particularly the widow.

Q. But if she didn't decide it the way you thought it ought to be decided, she wouldn't get the results of the investigation?

A. She would eventually get the investigation. I would [fol. 325] say that she would, but I would certainly caution her that this individual was an individual that had a reputation that wasn't for protecting laboring men.

Q. Would the word "eventually" imply that that would mean at a time when you were convinced that it was im-

possible to get these people into the hands of your Legal Counsel?

A. No, sir, I wouldn't say that the question of the Legal Counsel had anything to do with it whatsoever.

Q. Why the distinction between Legal Counsel and other lawyers?

A. Because there is a distinction between our Legal Counsel and other lawyers. Some other lawyers are so unscrupulous that they would take 75 percent of a widow's equity if they could get their hands on it, and I want to be sure that the individual attorney, whoever it happens to be, is one that has got a fair and reasonable reputation.

Q. How would you say that the percentage of other lawyers who had been brought before Bar Associations for improper action would compare with the percentage of your Legal Counsel?

A. I would say there is a great many of them, and I read it in the papers every day, that's brought before Bar Associations because of their unscrupulous methods. And corporation lawyers are no different than many other lawyers.

Q. Do you know what is done with people in the Bar [fol. 326] Associations who are found to do those things?

A. Yes, I do know.

Q. What is done with them?

A. They are censured or they are expelled.

Q. What do you do with yours that are found to do those things?

A. I would do the same thing.

Q. You have not up to now?

A. No, I haven't found any particular reason to up to now.

Q. I want to ask one more question. With regard to this Illinois opinion, your attitude about the Illinois opinion, if I understand it correctly, is that if it's satisfactory to Illinois, then you think it ought to be satisfactory to all the other States?

A. No, that's not correct.

Q. That's what you said, didn't you?

A. No, your impression of what I said isn't just exactly correct. If you want my correct interpretation, I will tell you.

Q. I would like to have it.

A. Well, let me tell you what it is. It's satisfactory to the State of Illinois. Now, it will be satisfactory, as far as the Brotherhood of Railroad Trainmen is concerned, in every other State except that State that wants its own stipulation. Nebraska wanted its own stipulation, Mis-
[fol. 327] souri wanted its own stipulation. Other States have asked for their own stipulations, such probably as West Virginia. Now, we have no way of knowing what the rest of these States want. If they bring up the question, then we sit down and work out the answer. The same thing will be true with Virginia.

Q. Well, did you not testify in the case that I just quoted from, "I feel that, if we have a satisfactory decision that pleases the Supreme Court in this state, there is no reason why it shouldn't please the courts in other States"?

A. I think that's reasonable, unless they find justification otherwise.

Mr. Bowles, Jr.: I have no further questions.

Redirect examination of William P. Kennedy.

By Mr. Stallard:

Q. Mr. Kennedy, has any lawsuit been brought against the Brotherhood or any Legal Counsel on cases of injury or death of members subsequent to April 1, 1959?

A. No, not to my knowledge.

Q. In other words, the cases which counsel for the Bar has been referring to are based upon cases of injury and death that happened prior to April 1, 1959?

A. That's correct.

[fol. 328] Q. And you have identified a letter which was marked Exhibit 3-(a), dated March 16, '59, addressed to all Legal Counsel of the Brotherhood of Railroad Trainmen and signed by you, in which you state among other things, "In compliance with said opinion, any Legal Counsel who represents the Brotherhood is hereby instructed and required to live up to said opinion in its entirety and any violation shall be cause to remove such attorney,

and the same shall be reported to the Bar Association of the particular State in which such violation may occur." What information would you have to have, when you refer to "any violation shall be cause," before you would refer a matter to the Bar Association or remove the attorney?

A. I would want information from authentic sources to indicate that this attorney representing the Brotherhood of Railroad Trainmen was handling his affairs in a highly unethical manner and was not representing the Brotherhood as instructed in this letter of March the 16th, 1959.

Q. You have been asked a question about an Attorney Hildebrand in California and some other gentlemen, who you say do not represent the Brotherhood, pleading the Fifth Amendment. Do you know anything about the circumstances yourself or is it all hearsay at this time?

A. The only official action—the only official notice that I have been advised of was investigators that were [fol. 329] also involved in that case, and when that was brought to my attention, I removed all of the investigators that were involved. Now, then, I understand now that since then there has been some court action in which Mr. Hildebrand and possibly others took the so-called Fifth Amendment. When that's officially brought to my attention, I will take action accordingly.

Mr. Bowles, Jr.: If I may interrupt, Mr. Stallard, to get you straight. I don't believe I referred to it as the Fifth Amendment and I am not sure that it is the Fifth Amendment. I think it had better reference to some requirement in California rather than the Federal Constitution, if I am not mistaken.

Mr. Stallard: I thought you used the words "Fifth Amendment."

Mr. Bowles, Jr.: I did not. I specifically said "self-incrimination."

Mr. Stallard: Oh, self-incrimination? All right.

Mr. Bowles, Jr.: Off the record.

(Discussion, off the record.)

By Mr. Stallard:

Q. Mr. Kennedy, does the Brotherhood have Investigators now on its payroll located in the various States or [fol. 330] are they all located here in Cleveland?

A. They are located in Cleveland, Ohio.

Q. And how many do you say that you have?

A. I would say right now we have just got two that's on full time.

Q. The Secretaries of the various lodges are required under the Constitution to make reports to the Grand Lodge, are they not?

A. The Secretaries of the various lodges are required to make all the reports from that particular lodge on any particular subject.

Q. Are they paid by the Grand Lodge for that work?

A. No, sir, they are paid by the subordinate lodge for that work.

Q. Do the subordinate lodges have their own Constitutions and Bylaws?

A. Yes, sir, they do.

Q. Do you appoint those Secretaries as your Investigators?

A. No, sir. The local lodge elects the Secretary and they automatically become the Investigator.

Q. Well, now, as I understand it, you have only approximately four Investigators that might carry your Investigator card at this time?

A. No, that wouldn't be true. The local lodge Secretaries have investigating cards. That gives them the right [fol. 331] to investigate any particular accident that may occur. Other than that individual lodge officer that has a card, nobody else has these cards. In other words, there is no so-called investigator that travels from one end of the country to the other with any of these cards; it's all confined to the local lodge.

Q. Well, a few years ago, prior and subsequent to April 1, '59, you did have several investigators?

A. Oh, we had a large number of them.

Q. How many members are there of the Brotherhood of Railroad Trainmen?

A. There are approximately 200,000.

Q. Do you take the position that the Brotherhood of Railroad Trainmen has the right to make known to its members attorneys and information which they may have gathered in the investigation of accidents and death?

A. Yes, we have that right.

Q. You take the position, then, that you have the right to advise your injured members, and also the families of those who have been killed, of attorneys whom you consider proper?

A. That is correct.

Q. Are you doing any more than that at this time?

A. No, sir, we are not.

Q. If it were shown by the Bar of Virginia that any of [fol. 332] your employees or people that you might direct were going farther, do I understand you would remove them if you could?

A. I would certainly assess discipline.

Q. You are perfectly willing to abide in Virginia by any decision handed down by the Virginia Court?

A. Yes, sir.

Q. And if the Virginia Court said you could not suggest an attorney to your member, would you stop?

A. Yes, sir, we would stop doing business in the State of Virginia.

Q. I understand, however, that would not mean that you wouldn't have legal counsel in Virginia?

A. We would, I presume—as a labor organization, we would have the right to have Legal Counsel in any State, but the question would be whether or not that Legal Counsel could handle personal injury matters. The question of a Legal Counsel is to handle the Brotherhood's activities in many other fields other than the personal injury field.

Q. Well, now, what other fields do you have in your organization?

A. Well, we have a large insurance organization. We have $150,000,000 worth of outstanding insurance. Some member may take us into a Court and claim that we are not paying an insurance benefit as we should. Some railroad may take us into Court because of a violation of some [fol. 333] particular one of their rules. Or we may be in-

volved in a legal dispute with some city over some local enforcement rule. We have all kinds of disputes that have no relation whatsoever to the Legal Aid Department in which we must have an attorney in every State to handle our affairs.

Mr. Stallard: That's all.

Mr. Bowles, Jr.: I have just one question.

Recross examination of William P. Kennedy.

By Mr. Bowles, Jr.:

Q. I take it from what you have said, Mr. Kennedy, that you have no objection, then, to the entry by the Chancery Court of the City of Richmond in this proceeding of a decree outlining what in the opinion of that Court you do have a right to do in regard to personal injury cases and death cases?

A. That is correct.

Mr. Bowles, Jr.: That's all.

(Signature waived.)

[fol. 334] Notary's certificate (omitted in printing).

[fol. 335]

NOTICE TO TAKE DEPOSITIONS (omitted in printing)

To Brotherhood of Railroad Trainmen:

* * * * * * *

35574.

THE SILVER STATE POST
Deer Lodge, Montana, Friday, March 15, 1957
Page 1

Investigator For B. of R.T. Fined $500 For Contempt

Men Judged Guilty of Practicing Law Without a License

Before Judge William Taylor presiding over the third district court session held Monday in Powell county courthouse, Pearley Wall, employed as a laborer in the Milwaukee Railroad shops, filed a petition to have the court declare Mark Verbon in contempt of court for practicing law without a license in violation of a Montana State statute.

Mr. Wall testified that he had received a back injury at the Milwaukee shops which incapacitated him for further work. Mr. Wall retained the law firm of Keeley, McElwain and Ryan.

Mr. Verbon, whom Mr. Wall stated that he had never seen before, came to Mr. Wall's house on March 2, according to the petitioner's testimony, and introduced himself as an "investigator for the legal aid department of the Brotherhood of Railroad Trainmen" of which Mr. Wall is not a member. It is alleged that he attempted to persuade Mr. Wall to allow him to handle his case and to obtain a release from the law firm of Keeley, McElwain and Ryan.

He advised Mr. Wall as to the possible settlements he might receive if he did so. Subsequently Mr. Wall [illegible]

At that recorded meeting Saturday morning Mr. Verbon asked Mr. Wall questions concerning his injury. It is reported that he attempted to persuade Mr. Wall to employ as lawyers on his behalf a Minneapolis law firm that is legal counsel for the Brotherhood of Railroad Trainmen. The conversation on the tape recording indicated that Mr. Verbon had had dealings with persons in other cities in Montana and in Washington. Robert Ryan of Keeley, McElwain and Ryan, appearing on behalf of the court, offered the tape to the court as exhibit A and had it played back in the court room.

Under sheriff John McGillis took the stand and testified that he went to Mr. Wall's home on the morning of March 9, took Mr. Verbon into custody and delivered him to the Powell county jail. Contracts printed with the name of Eugene A. Rerat were found on his person.

In answers to further questions while on the witness stand Mr. McGillis stated that on his return to his office after locking Mr. Verbon in his cell, he found in his office waste basket documents and notes which had been torn into pieces. Noel H. Boyer, special deputy for Sheriff Ed Darrow, testified that Verbon had attempted to destroy the papers in his possession by tearing them up and putting them into the waste basket in the sheriff's office. Mr. Boyer produced the papers which he had patched together with scotch tape. They were offered as exhibits 3, 4, 5 and 6. Exhibit 2 was a writing tablet which Mr. Wall had testified that he had loaned Mr. Verbon at their March 9th meeting. As shown in court, a portion of [illegible]

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He advised Mr. Wall as to the possible settlements he might receive if he did so. Subsequently Mr. Wall reported to his lawyers Mr. Verbon's request after which an agreement was reached where by a tape recorder was placed in Mr. Wall's home for the purpose of recording the conservation resulting from Mr. Wall's next meeting with Mr. Verbon scheduled for March 9.

At that recorded meeting Saturday morning Mr. Verbon asked Mr. Wall questions concerning his injury. It is reported that he attempted to persuade Mr. Wall to employ as lawyers on his behalf a Minneapolis law firm that is legal counsel for the Brotherhood of Railroad Trainmen. The conversation on the tape recording indicated that Mr. Verbon had had dealings with persons in other cities in Montana and in Washington. Robert Ryan of Keeley, McElwain and Ryan, appearing on behalf of the court, offered the tape to the court as exhibit A and had it played back in the court room.

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The defendant was judged guilty of contempt of court, fined $500 and sentenced to five days in jail. The sentence was suspended upon immediate payment of the fine.

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COMPLAINANT'S EXHIBIT K-1

(See opposite) ☞

Don't Be Misled By Ambulance Chasers!

On Monday, March 11, 1957, Marc Verbon, an investigator for the Brotherhood of Railroad Trainmen, was convicted of contempt of court for unlawfully practicing law without a license. This man was illegally soliciting business for certain lawyers of Minneapolis, Minnesota.

If you or any member of your family have been contacted by this man, or by any other person, attempting to obtain legal counsel for you or handle a case for you, we urge, for your own protection, that you consult an attorney admitted to practice in Montana.

POWELL COUNTY BAR ASSOCIATION

[fol. 338]

COMPLAINANT'S EXHIBIT K-3

(See opposite) ☞

Brotherhood of Railroad Trainmen

Lodge N° _____

Dear Sir and Brother:

Re: On the Job Injuries or Deaths

Some time ago I was appointed by President Kennedy to be the regional investigator for you and the other members of your B. of R.T. Lodge and my principal interest is in seeing to it that you and our other friends in your area are properly protected when they are injured in railroad service.

The B. of R. T. constitution provides that a lodge officer is to inform the Legal Aid Department when one of our brothers are injured and then I in turn am notified by the Grand Lodge of the happening of the accident so that I can contact our injured members and see to it that your rights under the Federal Employers' Liability Act are protected. In recent months the reports are sometimes delayed or absent. It has been my experience that the first 24 to 48 hours following a railroad personal injury is the most important time to develop facts. The mere fact that an employee is on the job when injured does not in itself make out a claim against the railroad employer and the negligence of the company in most cases has to be established. I am told by the lawyers for the brotherhood that the company claim agents regard the first day following the accident to be their most important day to establish that the liability is in favor of the company. You can therefore see why prompt notice to me of an accident is most important.

The assistance that I provide for our injured brothers is given free to the individual member and it is obvious to say that an injured member has everything to gain and nothing to lose by contacting me.

My work is especially necessary in cases of serious injury, but all too often because of the seriousness from a medical standpoint the employee is not able to make the necessary formal report to the brotherhood, and therefore, I strongly urge you to inform members of your immediate family to telephone me collect if you or any of our other friends are involved in accidents or are killed, and I also suggest that you keep this letter as a part of your personal file so that you will have my telephone number. I am located at 909 South Fifth Street, Clinton, Iowa and my telephone number is Chapel 2-4650. Accidents sometimes occur through no fault of your own

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Fraternally yours,

E. A. Stouvenel

E. A. Stouvenel
BRT Investigator

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[fol. 339]

COMPLAINANT'S EXHIBIT K-5

(See opposite) ☞

.83453.

TRAINMAN NEWS
April 10, 1961

BRT Veterans Feted At Lodge 72 Party

COLUMBUS, Ohio—High tribute was paid to veteran BRTers at the recent 12th annual oldtimers party held here by Lodge 72.

Over 250 attended the successful event at which a total of 720 years of membership emblems were awarded. F. Grubbs and J. J. Monahan were awarded 45-year pins.

F. C. "Monty" Montgomery, field service department manager and alternate vice-president, represented President W. P. Kennedy. He lauded the veteran BRTers for their loyalty to the Brotherhood.

Assistant General Secretary and Treasurer W. L. Hill discussed the popular new BRT insurance offered to the membership.

Keith E. Roberts, attorney in the legal counsel firm of Hensley and Hensley, delivered a brief talk on legal aid. He was accompanied by Bob Moss, BRT investigator.

Recent changes and laws governing railroad retirement was discussed by W. J. Fischer, manager of the local Railroad Retirement Board.

Brief talks were also delivered by General Chairmen L. E. Singer of Chesapeake & Ohio Lines North and W. E. Atkinson of New York Central—Ohio Central Division.

Toastmaster was J. P. Morgan, 72 secretary-treasurer.

Local Chairmen J. P. Engler and D. E. Fitch were party chairman and vice-chairman, respectively.

Other guests at the party included Joe Ballinger and Bill Vaugan of Grand Lodge Premium Audit Department, Paul Brown, 518 secretary-treasurer; M. M. MacDonald, 141 president, and R. B. Hartman, 175 president.

[fol. 340]

COMPLAINANT'S EXHIBIT K-6

THIS AGREEMENT, Made this 10th day of June, 1958, by and between The West Virginia State Bar, the official integrated Bar Association of the State of West Virginia, through its Committee on Unlawful Practice, party of the first part, and Bernard M. Savage, of Baltimore, Maryland, party of the second part.

WHEREAS, the Committee on Unlawful Practice of The West Virginia State Bar has conducted an investigation and has secured evidence which leads it to believe that second party, during the years 1952 to 1956, inclusive, as "Regional Counsel" of the Legal Aid Plan of the Brotherhood of Railroad Trainmen, did engage in unlawful practices within the State of West Virginia in that second party, through certain agents and employees of the Brotherhood of Railroad Trainmen, did solicit representation of persons injured within the State of West Virginia, and

WHEREAS, second party did voluntarily appear at a meeting of the Committee on Unlawful Practice held in Charleston, West Virginia, on the 13th day of July, 1957, and freely discussed his representation of clients who were injured within the State of West Virginia and the operation of the Legal Aid Plan of the Brotherhood of Railroad Trainmen, including his affiliation with and participation in such activity, and did signify to said Committee that he desired to be freed and acquitted of any charges that might be made against him by reason of his prior activities, and did represent to and assure said Committee that he would not in the future, through agent or otherwise, engage in any form of solicitation within the State of West Virginia, and did further represent to the Committee that one Norris Tingle, his employee and "Regional Investigator" of the Legal Aid Plan of the Brotherhood of Railroad Trainmen, would not in the future engage in any form of solicitation on his behalf or on behalf of any other [fol. 341] person or Attorney within the State of West Virginia, and that second party would be responsible for all acts of his agent, the said Norris Tingle, and

WHEREAS, second party expressed his desire to enter into an Agreement with The West Virginia State Bar, through its Committee on Unlawful Practice, assuring The West Virginia State Bar of his good faith in making such representations rather than be faced with legal proceedings in the Courts of the State of West Virginia,

NOW WITNESSETH: This Agreement between the parties, as follows:

(1) The West Virginia State Bar is an integrated association of all practicing Attorneys within the State of West Virginia, properly and legally created by statute and by rule of the Supreme Court of Appeals of West Virginia, and is the official organization of lawyers within the State of West Virginia. The Committee on Unlawful Practice, pursuant to Article VII of the By-Laws of The West Virginia State Bar, is the official committee having jurisdiction over all matters and questions constituting unlawful practice and is empowered to enter into Agreements with persons to desist from unlawful practice, including this Agreement.

(2) The beneficiaries of this Agreement shall be The West Virginia State Bar and its properly constituted lawful representatives and each and every State and Federal Court having jurisdiction in the State of West Virginia or in any part thereof.

(3) Second party agrees that in the future he will desist and refrain from the following:

(a) From in any way or in any manner, either personally or by agent, servant or employee, soliciting personal injury or death claims or cases of any railroad employees or the personal representatives of fatally injured railroad employees or personal injury or death claims of any other persons, either for himself or on behalf of any other person or Attorney;

[fol. 342] (b) From in any way or in any manner, either personally or by any agent, servant or employee, holding or representing himself to anyone as being qualified or authorized to practice law within the State of West Virginia, or to advise anyone as to his legal rights and remedies within the State of West Virginia;

(c) From in any way or in any manner, either personally or by any agent, servant or employee, practicing law or otherwise advising anyone as to his legal rights and remedies within the State of West Virginia;

(d) From in any way or in any manner, either personally or by any agent, servant or employee, soliciting and procuring Powers of Attorney or any Agreement, written or oral, purporting to authorize him, the said Bernard M. Savage, or any other Attorney or person, to represent clients in personal injury cases arising in the State of West Virginia, or purporting to authorize him, the said Bernard M. Savage, or any other Attorney or person, to perform or render any legal service whatsoever within the State of West Virginia;

(e) From in any way or in any manner, either personally or by agent, servant, employee, partner or otherwise, representing any person in any legal matter, Court action or proceeding whatsoever, or otherwise practicing law within the State of West Virginia, except in a completely ethical and legal manner through associate counsel licensed to practice law in West Virginia according to the statutes of the State of West Virginia and the orders and rules of the various Courts therein; and

(f) From participating in or confederating in or conspiring in any of said unlegal or unethical practices or activities, alone or with any other person.

[fol. 343] (4) Second party agrees that in the future his employee, Norris Tingle, will not engage on his behalf in any of the activities set out in Paragraph (3) hereof, and that he will be fully responsible for any future activity of said Norris Tingle so long as said Norris Tingle is his agent and employee.

(5) Second party further agrees that all of his activities as a lawyer, whether or not he be acting as "Regional Counsel" of the Brotherhood of Railroad Trainmen, shall be ethical and legal beyond any question, and that he will not engage in any activities as "Regional Counsel" of the

Brotherhood of Railroad Trainmen which are not ethical and legal.

(6) Second party further agrees that if at any time in the future he should violate this Agreement, it shall not be necessary for the beneficiaries of this Agreement, described in Paragraph (2) hereof, to prove that the previous conduct of second party was such as to warrant a finding that such previous conduct justified an injunction or other disciplinary order, and upon proof of such future violation an injunction or other disciplinary order may be entered (without further proof of previous conduct other than this Agreement) with the same force and legal effect as a decree pro confesso, consent decree or admission in open Court. It is not the intention or purpose of this Paragraph to define, limit or enlarge the jurisdiction of any Court but simply to eliminate the need for proof of prior conduct to warrant any future injunction or disciplinary order in the event this Agreement should be violated by second party.

(7) Second party further agrees that personal jurisdiction over him shall be obtained in the State of West Virginia upon thirty (30) days' written notice, forwarded to him by registered mail, return receipt requested, addressed to second party, Mathieson Building, Baltimore, Maryland. A copy of the pleading instituting the proceeding shall be forwarded with such notice.

[fol. 344] Witness the following signatures and seal:

The West Virginia State Bar, Acting Through Its Committee on Unlawful Practice,

By /s/ Samuel D Littlepage
Its Chairman

Attest:

/s/ Oshel C. Parsons
Secretary

/s/ Bernard M. Savage (Seal)
Bernard M. Savage

Witnesses:

/s/ Rita J. Traub
/s/ Brownie F. Lovelace

[fol. 345]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND, VIRGINIA

COMMONWEALTH OF VIRGINIA, ex rel., Virginia State Bar, Complainant,

v.

BROTHERHOOD OF RAILROAD TRAINMEN et al., Defendants.

Deposition of Dewey C. McLaughlin—June 1, 1961

Deposition of DEWEY C. MCLAUGHLIN, called as a witness on behalf of the complainant, before William E. Ferris, a Notary Public within and for the State of Ohio, at the offices of Messrs. Arter, Hadden, Wykoff & Van Duzer, 1144 Union Commerce Building, Cleveland, Ohio, at 1:45 p.m. Thursday, June 1, 1961, pursuant to notice, to be read in evidence upon the trial of the above-entitled action.

APPEARANCES:

Mr. Aubrey R. Bowles, Jr., and Mr. Aubrey R. Bowles, III, for the Complainant;

Mr. Beecher E. Stallard, for Defendant Brotherhood of Railroad Trainmen.

[File endorsement omitted]

[fol. 346]

STIPULATION

It was stipulated by and between counsel for complainant and Defendant Brotherhood of Railroad Trainmen that all requirements of statutes with regard to the reading and signing of this deposition by the witness are waived.

DEWEY C. MCLAUGHLIN, of lawful age, called as a witness on behalf of the complainant, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

Direct examination of Dewey C. McLaughlin.

By Mr. Bowles, Jr.:

Q. State your full name, age, and occupation.

A. Dewey C. McLaughlin, R. D. 1, Homeworth. Right now I am, oh, farming a little and retired. I have got a couple of acres there at home I fool around on.

Q. How old are you?

A. I will be 62 in November.

Q. Did you ever work for the Pennsylvania Railroad Company?

A. I did.

Q. Did you have an accident on that railroad?

A. I did.

Q. When?

[fol. 347] A. February the 19th, 1960.

Q. Whereabouts?

A. At Canton, Ohio.

Q. Were you a member of the Brotherhood of Railroad Trainmen?

A. Yes, sir.

Q. When you were injured, what happened to you? Was that your left hand that was injured?

A. My left hand. I was riding the hump and I went solid before I thought I was hitting and it threw me and I grabbed over the end gate of the gondola and the steel shifted and pinned me against the gondola.

Q. When you were injured, where were you taken?

A. Mercy Hospital.

Q. In Canton?

A. Yes, sir.

Q. And you were a freight brakeman then?

A. I was promoted to conductor, but I happened to be performing brakeman's duty at the time I was injured.

Q. Who was the conductor on the operation that was happening at the time you were injured?

A. A fellow by the name of Emmett Adley.

Q. E-m-m-e-t-t A-d-l-e-y, I believe?

A. That's right.

Q. Now, how long did you stay in the hospital?

[fol. 348] A. Well, I was in the hospital 18 days when I first got injured.

Q. And then did you go home?

A. The doctor let me go home. I think it was three weeks and a day or something like that. Then, of course, I had to go see the doctor practically every day to have my hand dressed.

Q. After you stayed there three weeks, did you go back to the hospital?

A. I did.

Q. And how long all together did you stay in the hospital?

A. Well, it was 38 days, I believe, as I recall.

Q. While you were at home during that interim did anybody come to see you?

A. Yes, sir.

Q. Who?

A. Emmett Adley and a fellow by the name of Taylor.

Q. Don Taylor?

A. Well, I think—I understand that was his name.

Mr. Stallard: Counsel objects to the lawyer telling him the name if he doesn't know himself.

A. Well, they called him Don Taylor when he came right in my house. I learned afterwards his name was Don Taylor, you see.

[fol. 349] Q. Where did he say he was from?

A. Well, he said he represented—

Mr. Stallard: Counsel for the defendant objects to this as all being hearsay.

Q. You talked to the man, did you not, Mr. McLaughlin?

A. I talked to him. He was at my house, yes.

Q. Where did he say he was from?

A. He said he represented the Legal Aid of the B. of R. T. or something like that or attorneys, and so forth.

Q. What did he ask you to do?

A. Well, he wanted me to sign up for him to handle my case against the company.

Q. Did you agree?

A. No, sir.

Q. Why didn't you agree?

A. Well, right at the time I didn't know whether I was going to need counsel or not and I figured if I did I would pick my own counsel. That's the way I felt about it.

Q. Did Mr. Taylor go away?

A. Yes, he went away.

Q. Did he ever get in touch with you again?

A. He called me twice long distance. I don't know where he called from.

Q. What did he say then?

A. Wanting to know about what I did about my case, [fol. 350] whether I had got counsel to handle it, and I told him I hadn't.

Q. Did he say anything further?

A. No, he didn't say anything too much further, only that he would get in touch with me later.

Q. Did you employ counsel?

A. No, I didn't.

Q. Did you settle your case with the railroad?

A. I did.

Q. Was it satisfactory?

A. Yes, sir.

Mr. Bowles, Jr.: That's all.

Cross examination of Dewey C. McLaughlin.

By Mr. Stallard:

Q. How did you get in touch with the attorney here for the Bar of Virginia?

A. Well, just through a fellow by the name of Mr. White came to my house to see me.

Q. Who is Mr. White?

A. Well, I understand he represents the American Association of Railroads.

Q. In other words, the American Association of Railroads through Mr. White contacted you and got you to come in and testify?

A. No, he didn't get me to come and testify. There was [fol. 351] nothing compulsory about me coming to testify. I came on my own will. He wanted to know if I would come to Cleveland with him and I told him I would.

Q. Well, did he pay your fare to come down here?

A. He never paid me. He bought me a 10-cent cup of coffee in the morning.

Q. How far do you live from Cleveland?

A. Oh, about—it must be about around 65 miles, 70 miles. I don't know just exactly what the mileage is.

Q. How did you get down here?

A. I came with him in his automobile.

Q. Came with Mr. White, who is a representative of the American Association of Railroads? You really don't know what this case is all about, do you?

A. Well, no, I don't. I don't know too much about what the case is about, but I do know this much: they did cut—now, this is off the record. Keep it off the record.

Q. No, you can't do that.

A. Well, go ahead and put it in, I don't give a damn. I had never drawn my '59 vacation pay and the assistant griever, Emmett Adley, said that there was no need to even try to get it. I signed a resignation and walked downstairs and put in for my vacation pay and he said there was no need to even talk to the superintendent about it, that I wouldn't get no vacation pay on account of resigning.

[fol. 352] Q. Well, now—

A. That's one reason that I volunteered to help—to come up here with Mr. White.

Q. Because Mr. Emmett Adley said you wouldn't get your vacation pay?

A. That is right, and I haven't received it yet.

Q. Mr. Emmett Adley is a conductor, is he not?

A. He was assistant griever in the B. of R. T. Lodge at Canton at 951, I believe is the number of that Lodge.

Q. He is what?

A. He was assistant griever.

Q. Assistant grievance?

Mr. Bowles, Jr.: Griever. G-r-i-e-v-e-r.

A. Local Grievance Committee.

Q. Of what lodge?

A. I believe the number of the lodge is 951.

Q. 951? Is that the Brotherhood of Railroad Trainmen?

A. That's the Brotherhood of Railroad Trainmen.

Q. This is Lodge 951 where?

A. Canton, Ohio.

Q. Canton, Ohio? And you are a member?

A. I am a member.

Q. And you got angry with Mr. Emmett Adley?

A. I didn't get angry, but he just told me that he couldn't get my vacation pay because I resigned, signed a resigna-
[fol. 353] tion. He never even talked to the superintendent or anybody about it.

Q. Now, who is Don Taylor?

A. Well, I don't know who Don Taylor is, outside of what he told me. He said he represented the Legal Aid of the B. of R. T.

Q. Well, do you think Don Taylor was a lawyer?

A. I don't know. I couldn't say that.

Q. You had never seen him before?

A. I never seen the man before.

Q. When did this take place?

A. Well, it was some time between there that I was in the hospital 18 days and those three weeks that I was out. It must have been in February, because—I mean in March, because I got hurt the 19th of February and I was there 18 days and then I come home for three weeks.

Q. Do you know who is president of the BRT?

A. Well, Kennedy is President of the B. of R. T.

Q. Is that Mr. Park Kennedy, as we know him?

A. I don't know his name. I wouldn't know the man. For all I know, you may be him.

Q. Have you ever reported to Mr. Kennedy that Mr. Don Taylor represented himself as being a representative of the BRT?

A. No, I never reported nothing to him, because I figured
[fol. 354] they knew what they were doing. My representative brought the fellow in to see me. The fellow that represents me brings him over to see me, in the organization. I wouldn't think he would pick up some outsider.

Q. Do you know where he is from?

A. No, I couldn't tell you where he is from. I couldn't say. I don't even know where he called me from long distance two different times.

Q. When you say handling your case, isn't the practice

in your small cases for your own Lodge to go with you when you go down to try to settle a case?

A. Well, in fact, I don't think so, because here if I was in some trouble with the company, they are supposed to represent me there.

Q. Well, nobody went with you down to the company's office? Didn't go down with you at all?

A. No. I went by myself.

Q. So you went by yourself? Do you know who is Regional or Legal Counsel for the State of Ohio?

A. What do you mean by that?

Q. For the Brotherhood of Railroad Trainmen?

A. No, I don't know who is Legal Counsel for them.

Q. So a man from your Lodge by the name of Emmett Adley—

A. That is right.

Q. —came to see you? Were you glad to see him?

[fol. 355] A. Naturally; you work with him every day.

Q. You work with him every day?

A. Not every day. Every other day or maybe so often like that.

Q. You didn't think there was anything unusual about that, did you?

A. No, only he just brought this fellow in and introduced him to me as Mr. Taylor and he represented the Legal Aid of the B. of R. T., and so forth. I don't know just how they did word it. It's been over a year.

Q. So you don't really know who is the Legal Counsel for the BRT here in Ohio, do you?

A. To name him, no, I couldn't name him.

Q. Your friend, Mr. Emmett Adley, who is a member of your Lodge, never told you where he was from?

A. He said something about representing the B. of R. T. in Cleveland.

Q. He said something about representing the B. of R. T. in Cleveland? But you don't know whether he was a lawyer, do you?

A. No, I don't know whether he was a lawyer or what he was.

Q. You just don't know? So do you attribute anything unusual that a member of your own Lodge, a man you work

with every day, brought somebody to see you about your accident?

A. Well, I figured I had heard of the Legal Counsel that [fol. 356] the BRT had and I figured he brought one from the BRT. No doubt he said he was representing the Legal Counsel of the B. of R.Ters.

Q. But you don't know that to be a fact, do you?

A. Well, what would you think? A man comes in and tells me he is representing somebody. I wouldn't have no cause to say, "Why, you don't represent the BRT," would I?

Q. Now, if Mr. Adley had brought in some lawyer from Canton and said, "I recommend this lawyer to you," would you have employed him?

A. No, I don't think I would have, until I seen what—

Q. Would you have reacted the same way you did in this case?

A. I probably would have.

Q. That you would have said that you would handle your own case?

A. I didn't tell him that I would handle it. I told him I wanted to see what the Company had to offer me first and then there was plenty of time for me to get an attorney.

Q. Did you know that your Local had to make a report to the Grand Lodge of your injury?

A. I don't know whether they had to make a report or not.

Q. Do you know whether a report was made of your accident?

A. I don't know whether they even made a report to the Grand Lodge.

[fol. 357] Q. Now, could you say that this long distance call was from the man that came with Mr. Adley and talked to you, known, as you believe, as Don Taylor?

A. That's what he told me his name was when he was talking to me over the telephone.

Q. But you don't know that to be true, do you?

A. Well, would you assume the man would call me up and tell me he was Don Taylor and he was not?

Q. I asked you, do you know whether he was Don Taylor?

A. How the hell could I swear it was Don Taylor and me at Homeworth and him down in Columbus or up here in Cleveland? What the heck is wrong with you, man?

Q. You really don't know whether the Brotherhood of Railroad Trainmen sent somebody to help you or not?

A. Well, I wouldn't think Emmett Adley would come in and introduce him as a representative of the Brotherhood of Railroad Trainmen and he was not and him a member and a griever of the committee.

Q. He didn't take any statement from you, how your accident happened or anything like that, just came in to see you?

A. He came in to see me to handle—he was interested in handling my case if I got an attorney.

Q. About what time of day was this?

A. I don't know, I think it was around 2:00 or 2:30 in the afternoon or something like that.

[fol. 358] Q. And no report was ever made to your Lodge or to the Grand Lodge that this man, Don Taylor, came with Emmett Adley? You never made any report of that?

A. No, why should I? I didn't owe the Lodge nothing.

Q. You have never told anybody that other than Mr. White, who represents the American Association of Railroads?

A. Well, I think I told—I wouldn't be sure about it, but I think I told the claim agents before White came up there to see me.

Q. You have never told anybody at your Local Lodge or at the Grand Lodge that somebody—

A. I might have talked it over with some of the members. I was over there at the Lodge a couple of times after this happened, even after my hand healed up.

Q. You don't know whether you did, you might have? You just surmise that?

A. We could have talked it over.

Q. You wouldn't testify either way? You just don't know, do you, whether you have ever mentioned it?

A. I don't recall whether we talked it over about Taylor coming to see me or not. I don't recollect. It's been over a year.

Q. You have certainly never made any report of this to the Grand Lodge, an official report of Don Taylor coming to see you?

[fol. 359] A. No, why should I?

Mr. Stallard: That's all.

Redirect examination of Dewey C. McLaughlin.

By Mr. Bowles, Jr.:

Q. Two questions, sir. What lawyer did Don Taylor want you to employ?

Mr. Stallard: Counsel will object to that.
Mr. Bowles, Jr.: Let him answer the question.

A. It was some firm in Chicago, I believe, as well as I remember it. I just don't recall their names to call them out.

Mr. Stallard: Counsel for the defendant objects to this as a leading question, and the witness has stated he did not know what firm of lawyers, he did not know whether Don Taylor was a lawyer, and it was all hearsay, in the absence of the defendant, and therefore is not binding in any way on the defendant and should not be asked.

Q. I hand you here, Mr. McLaughlin, a statement that you made and signed on December 1, 1960, for Mr. White and ask you to look at that and see whether that refreshes [fol. 360] your memory as to what lawyer he asked you to employ?

A. I am pretty bad about remembering names. I might have had it there at the time. Maybe I wrote it down perhaps.

Mr. Stallard: Surely counsel for the complainant is not trying to impeach his own witness?

Q. No, I am asking you to refresh your memory by looking at your statement and see what lawyer it was that Mr. Taylor wanted you to employ.

Mr. Stallard: May I see that instrument he has got?
Mr. Bowles, Jr.: Yes, as soon as he gets through with it.

Q. You see the lawyer's name in there?
A. I can't hardly see with these glasses. They are cockeyed on me.

Mr. Stallard: Counsel for the defendant objects to counsel for the plaintiff pointing anything out to the witness.

Mr. Bowles, Jr.: I haven't pointed anything out. I am just looking over his shoulder.

Mr. Stallard: He is getting ready to do so with his pencil.

Mr. Bowles, Jr.: I have got my pencil poised in the air [fol. 361] and I haven't pointed out a thing. I am standing behind the witness and he doesn't even know what I am doing.

Q. Does the statement refresh your memory as to what attorney that he wanted you to employ?

A. It does, but I have got it marked down, I think, down at home. If I had known that, I would have brought it along with me.

Q. What is the name of the attorney that he asked you to employ?

Mr. Stallard: The witness is being led by his own counsel and he has said he didn't know. Now, he is trying to remember, and I wrote down what he said. "I do not know. Some firm in Chicago."

Mr. Bowles, Jr.: He said, "I do not remember."

Q. Now, do you remember, Mr. McLaughlin?

Mr. Stallard: I want to examine this instrument first.

Mr. Bowles, Jr.: Wait a minute. You had quit and I have got him on redirect.

Mr. Stallard: I want to see this before you go any further.

Mr. Bowles, Jr.: Just one minute. He is looking at this [fol. 362] to refresh his memory and I insist on finishing what I am doing.

Mr. Stallard: Counsel is supposed to see it before he ever refreshes his memory to see if it's proper.

Mr. Bowles, Jr.: That is not necessarily true.

Mr. Stallard: It may not be proper.

Mr. Bowles, Jr.: Let's stop arguing and let's get along.

Mr. Stallard: I want the record to show that.

Mr. Bowles, Jr.: Let it show.

A. I can't read his handwriting. Hender and Monk—or Monk and Murray.

Q. Henslee, Monek & Murray?

A. I can't hardly—

Q. Now, hand the paper to Mr. Stallard, please.

A. I lost one of the nose pieces on my glasses coming up here this morning.

Q. You are having trouble seeing, is that what it is?

A. Yes.

Q. I want to ask you one other question, please. Sir, what was the amount of your settlement?

A. $40,000.

[fol. 363] Mr. Bowles, Jr.: That's all.

We will be glad to file that as an exhibit if you want it, Mr. Stallard.

Recross examination of Dewey C. McLaughlin.

By Mr. Stallard:

Q. Mr. McLaughlin, you could not read this after it was handed to you, but I observe that you perhaps signed it?

A. I signed it, but the time that I signed that and read it my glasses wasn't broke. I broke my glasses this morning coming up here, I told you. The nose piece came off and it gouged me and got them out of focus. I can hardly see with them.

Q. The same glasses you had on in December?

Mr. Bowles, Jr.: But not broken.

A. They wasn't broken, though.

Q. You didn't make out this statement at all, did you?

A. I didn't write it, no, myself.

Q. Who wrote this statement?

A. Mr. White copied it down as I told him.

Q. Mr. White of the American Association of Railroads?

A. That is right.

Q. Now, he has the date on here, December 1, 1960. Is that the proper date?

A. December 1, 1960?

[fol. 364] Q. Yes.

Mr. Bowles, Jr.: The date of the statement, Mr. McLaughlin.

The Witness: Perhaps that was the date.

Q. Where is Mr. White from?

A. I understand he lives in Pittsburgh.

Q. You understand he lives in Pittsburgh? He wrote out a statement which you signed. Did he leave a copy of it with you?

A. No, I didn't ask him for a copy.

Q. You didn't ask him for a copy? Now, can you tell me right now the name of the firm of lawyers that were recommended to you?

A. It's that Henslee and Murray and I can't remember that. Just like I told you, damn, I can't hardly remember the names.

Q. If you couldn't remember when this man you called Don Taylor was there—when was he there?

A. I don't disremember the date. I told you it was in March. On the date, I don't know what date it was.

Q. In March what year, now?

A. 1960.

Q. 1960? Well, now, you had some trouble remembering, but you knew on December 1, 1960, the name of the attorneys [fol. 365] recommended to you?

A. I told you I think I have it wrote down down there at the house some place in case I wanted to get in touch with them.

Q. You think you have? You are not positive of that, however?

A. Well, I imagine I could rake it up if I wanted to, if you want to get that God damned particular about it. Christ, I didn't come up here to be seesawed by a God damned B. of R. T. attorney. I will walk out. I come up here on my own free will.

Q. Do you want to leave?

A. I don't give a damn.

Q. You don't give a damn? Well—

A. That's just through attorneys like you is why the BRT attorneys didn't handle my case.

Q. Well, I am asking you—

A. Now, I will be frank with you.

Q. You are under oath here.

A. I don't care.

Q. And you are positive these are the attorneys?

A. That was the names that he told me that he was representing.

Q. That Don Taylor told you?

A. Yes.

[fol. 366] Q. And now you testified that he said he was from the Regional Counsel's office, did he?

A. That's what he said, yes, sir.

Q. Well, now, was he representing the Claims Department or the BRT?

A. He said he was representing the Claim Department of the Legal Aid or the BRT or something like that. Legal Aid I think he called it.

Q. Now, then, you come here and say that he was representing some attorneys.

Mr. Bowles, Jr.: I object to that, and he hasn't said that.

A. They are the Legal Aid.

Mr. Bowles, Jr.: Just a minute. I object. He said no such statement as that. He said that that was the attorney that this Legal Aid representative wanted him to employ. That's all he said. And you can't put words in his mouth to the contrary.

Q. You have not seen Taylor since?

A. No, I haven't seen him since. I told you I had two conversations with him over the telephone afterwards.

Q. And if Adley had handled your matter about your vacation, it would have been perfectly all right, wouldn't it, you would have hired these attorneys?

[fol. 367] A. No, I wouldn't have hired the attorneys, because my vacation came up after I made the settlement.

Q. Your vacation came up after you made the settlement?

A. Yes.

Q. You didn't think they handled it right?

A. He refused to handle it. They sent me a life membership card of the BRT organization. I took it out of the envelope and I throwed it in the waste paper basket, because

they never done nothing for me all the time I worked on the railroad. Put that in if you want and take it down and show it to President Kennedy.

Q. How long did you work on the railroad?

A. I worked 15 years for the Pennsylvania and I worked practically nine years for the Wheeling & Lake Erie.

Q. There are two factions in the BRT, aren't there, some that want to get the incumbent office group out and some that want to keep it in; is that correct?

A. I don't know nothing about that, the office part of it.

Q. What faction do you belong to?

A. I belong to the BRT, that is, the Brotherhood of Railroad Trainmen.

Q. Are you in good standing in your Lodge?

A. I just got through telling you, they sent me a paid up card that I don't have to pay no more dues to belong to the organization.

[fol. 368] Q. Well, now, you could employ any attorney you wanted to, couldn't you? They don't force you to employ an attorney?

A. No, they don't force you.

Q. You know that you have the service if you want it?

A. But they were around before my hand—before I was even through the operation on my hand; wanted me to sign up for their attorneys to handle.

Q. You say "they"?

A. This Don Taylor. He said he represented the Legal Aid of the B. of R. Ters and told me about these attorneys.

Q. What city was he from?

A. Columbus.

Mr. Bowles, Jr.: You asked him that twice before.

Mr. Stallard: I am asking him again.

Q. You say he is from Columbus? How far is Columbus from your home?

A. I think it's about 76 miles on the railroad from Canton, I am not sure, and I live about 15 miles out of Canton.

Q. You had never seen him before?

A. No, I had never seen him.

Mr. Stallard: Counsel would object to the introduction of this statement. It was prepared by Mr. C. S. White of

Pittsburgh, Pennsylvania, whom the witness has identified [fol. 369] as an agent of the Association of American Railroads. This case is really a case not of the Commonwealth of Virginia ex rel.—

Mr. Bowles, Jr.: I object to that statement.

Mr. Stallard: —ex rel. State Bar but a case of the American Railroad Association against the Railroad Brotherhood whom I represent.

Mr. Bowles, Jr.: I object to that statement and state that uncategorically that that is not a fact; that this man is here and he was solicited to come here at my request on behalf of the Virginia State Bar; that I contacted the man that brought the fellow here through his superior officer, and I made all of the arrangements and the State Bar is bearing the expense.

Now, the statement is made available for introduction if Mr. Stallard wishes it to be introduced.

Mr. Stallard: I certainly would object to it being introduced as a self serving declaration, prepared by a hostile person or a hostile man to the client that I represent.

Mr. Bowles, Jr.: I ask that the stenographer mark this [fol. 370] exhibit for the sole purpose of showing to the Chancellor that the man's testimony before any reference made to the exhibit was exactly what is contained in the exhibit.

Mr. Stallard: I object to it as being filed with the papers, because it was not prepared by the witness. He did not have a copy left with him, as the law of Virginia would require.

Mr. Bowles, Jr.: This is not a personal injury case and the law you refer to has no application to it.

The Witness: I could have had a copy of it if I would have wanted it. I didn't see any need of me keeping a copy of it. In fact, I never knew it was running into something like this, to be here seesawed by an attorney, or I wouldn't have even came up. And as far as any attorney, I wouldn't trust them from here to that door. I wouldn't give a damn for my father and he was an attorney. I'd say I think you are crooked, because they are in for what they can get.

Mr. Bowles, Jr.: Have you got any further questions? I have none.

[fol. 371] Mr. Stenographer, if you will just mark that for the purpose of showing it.

(Statement of Dewey Clarence McLaughlin marked, "Complainant McLaughlin Exhibit 1.")

Thank you, Mr. McLaughlin.

(Signature waived.)

[fol. 372] Notary's Certificate (omitted in printing).

[fol. 373] Notice to Take Depositions (omitted in printing).

To Brotherhood of Railroad Trainmen:

* * * * * * *

[fol. 374]

Complainant's Exhibit McL-1

Statement of Dewey Clarence McLaughlin Age 61

Occupation Yard Freight Brakeman

Residence R. D. 1, Homeworth, Ohio

Tel. 5-86-2934

Business Address ..... Tel. .....

Relative to Accident to Dewey Clarence McLaughlin at Canton, Ohio on February 19, 1960

My name is Dewey Clarence McLaughlin and I live at R. D. 1, Homeworth, Columbiana County, Ohio. I was employed by the Pennsylvania Railroad Company for 15 years. I am married and I have 5 minor children as my only dependents. I was employed by the Pennsylvania Railroad Company as a Freight Brakeman. I have not worked for the Railroad since the date of my accident, February 19, 1960.

On February 19, 1960, I injured my left hand while at work for the Pennsylvania Railroad Company. Following the accident I was taken to the Mercy Hospital in Canton, Ohio. I was confined to the hospital for 38 days. The

only people who came to see me in the hospital were my immediate family. I would like to state I was first confined to the hospital for 18 days and I was then sent home for 3 weeks. I then returned to the hospital for the remainder of the 38 days.

Approximately 24 days following my accident I was visited at my home by Emmett Adley who was the Conductor on my job and Don Taylor from Columbus, Ohio. Mr. Taylor said he represented the Legal Aid Department for the Brotherhood of Railroad Trainmen in Cleveland, Ohio. Mr. Taylor said he wanted me to sign a contract for him so my case could be handled by the Legal Aid Attorneys, Henslee, Monek and Murray. I told Mr. Taylor I was not interested in any lawyer and I wanted to wait and see what the Railroad Company had to offer. I would estimate Mr. Adley and Mr. Taylor were in my home 30 minutes. I never asked anyone to bring Mr. Taylor to my home. I had never seen or heard of Mr. Taylor before he came to my home. I was not seeking any legal advice and I never asked anyone to bring Mr. Taylor

/s/ DEWEY C. MCLAUGHLIN

Signed at R. D. 1, Homeworth, Ohio
in the presence of

/s/ C. S. WHITE

Residence 10 Elmhurst Rd.
Pittsburgh, Pa.

[fol. 375] to my home. I did not give Mr. Taylor the chance to produce a contract. I told him I was not interested in the Legal Aid Attorneys for the Brotherhood of Railroad Trainmen. Mr. Taylor told me to get in touch with him at Columbus, Ohio, if I changed my mind.

Following his visit to my home Mr. Taylor called me on the telephone at my home two different times. He wanted to know if I had changed my mind about retaining the legal aid lawyers, Henslee, Monek and Murray of Chicago. I told Mr. Taylor both times I was not interested in any lawyer. Since the second phone call I have never

heard from Mr. Don Taylor. Mr. Taylor never told me what my case was worth.

I settled my case direct with the Pennsylvania Railroad Company on September 14, 1960 for $40,000.00.

I have carefully read over this 2 page hand written statement and it is full, true and correct. No inducement of any kind has been made to me to get me to sign each page of this two page statement. I fully realize that this statement may be used by Railroad officials, Bar Associations or any other Committee in their efforts to stop unethical practices.

/s/ DEWEY C. MCLAUGHLIN

Signed at R. D. 1, Homeworth, Ohio
in the presence of

/s/ C. S. WHITE

Residence 10 Elmhurst Rd.
Pittsburgh 20, Pa.

December 1, 1960

[fol. 376] [File endorsement omitted]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

COMMONWEALTH OF VIRGINIA, et rel., Virginia State Bar,
Complainant,

v.

BROTHERHOOD OF RAILROAD TRAINMEN et al., Defendants.

Depositions of: Clifford D. Olson, and Mrs. Bette Olson—June 15, 1961

APPEARANCES:

George Beal, of the firm of Bottum & Beal, Rapid City, South Dakota, appeared for complainant;

Louis Crill, Minneapolis, Minnesota, appeared for defendants.

Philip B. Lush, Minneapolis, Minnesota, of counsel.

Depositions of Clifford D. Olson and Mrs. Bette Olson, taken before Harold Fliday, a notary public and an official court reporter in and for the state of South Dakota, pursuant to the Notice to Take Depositions, hereto annexed, at the law offices of Bottum & Beal in the city of Rapid City, South Dakota, beginning at 10 o'clock, A. M., on the 15th day of June, 1961, to be read in evidence on behalf of the complainant in the above entitled cause pending in the Chancery Court of the city of Richmond, state of Virginia.

[fol. 377] CLIFFORD D. OLSON called as a witness, and having been first duly sworn, testified as follows:

Direct examination.

By Mr. Beal:

Q. Would you state your name, please?
A. Clifford D. Olson.
Q. Where do you live, Mr. Olson?
A. 411 East Talent, Rapid City.
Q. And what has been your occupation up until recently?
A. Switchman on the Chicago & Northwestern Railroad.
Q. And were you involved in an injury or accident on the railroad?
A. Yes.
Q. And do you remember about when that took place?
A. July 17th.
Q. What was the nature of the accident?
A. The loss of a left limb.
Q. And you were hospitalized I presume as a result of this accident?
A. Yes.
Q. And at what hospital?
A. St. Johns.
Q. And were you contacted by any persons regarding this accident while you were hospitalized in St. Johns?

A. Yes.

[fol. 378] Q. Do you remember approximately when that was?

A. Well, as far as dates I can't. The approximate time would be I would say 3 days to 4 days after I had the accident.

Q. And who contacted you?

A. Gale Clinkenbeard and Jerry Ballieu.

Q. Now, Cliff, would you relate in your own words to the best of your recollection what, if anything, Mr. Clinkenbeard and Mr. Ballieu said to you at the time they contacted you at the hospital?

A. Well, they informed me that they were representatives, which I knew Ballieu was, of the railroad Brotherhood of Trainmen, and advised me of rights under the by-laws of the Brotherhood of Trainmen.

Q. And what else, if anything, was said by them?

A. Well, they informed me that I could use legal aid if I so wanted to do so.

Q. And was any mention made of the attorneys in the legal aid?

A. Well, they said I could use my own, but the ones that were mentioned were Mr. Lush and his firm.

Q. And what, if anything, was said regarding the capabilities or abilities the Mr. Lush firm?

A. Well, I was informed that they were a very capable firm in this type of a transaction if you might call it that.

Q. Was any statement made that they could get you more money?

A. Well, they said they possibly could.

Q. Now was that about the nature and extent of the [fol. 379] first conversation, or was there anything else said then?

A. Well, in the first conversation they just informed me that they were—there wasn't much said about anything outside of the fact that they were from the Railroad Brotherhood of Trainmen.

Q. At that first conference was anything said about entering into a retainer contract with this law firm?

A. At the first one I couldn't truthfully say.

Q. Now did you have a subsequent conference with Mr. Clinkenbeard?

A. Yes.

Q. And when and where did that take place?

A. That was also at the hospital. I imagine, I would say about a week after the first one.

Q. Now would you relate again to the best of your knowledge what was said by them to you at that second meeting?

A. Well, they informed me again of the rights and they thought that legal aid would do me some good and possibly could get more money for me than I could if I was to go ahead and settle it myself.

Q. Was anything at that conference said about entering into a retainer contract with the law firm?

A. I couldn't tell you when that happened. I believe it happened at home after I was out of the hospital.

Q. Then you got out of the hospital after you entered in about two weeks, is that right?

[fol. 380] A. Two weeks and three days I believe it was.

Q. Then you went home.

A. Un-huh.

Q. And then were you contacted at home again by Mr. Clinkenbeard?

A. Yes.

Q. And was anybody with Mr. Clinkenbeard?

A. Well, I believe he was there once by himself, and I believe he was there with Jerry Ballieu, and he was also there one time with Mr. McNurlan.

Q. And who was Mr. McNurlan?

A. He was an investigator for the Railroad Brotherhood of Trainmen. To the best of my knowledge he is.

Q. And then at this conference at your home was anything said about entering into a retainer contract with the legal aid law firm?

A. It was but I can't recall which time it was.

Q. Well, you do recall there was a mention of a retainer contract, is that correct?

A. That's right.

Q. And was one signed by you?

A. Yes.

Q. Do you have copy of that contract?

A. I have one at home.

Q. You have one at home. What happened to the original of that contract?

A. I believe the law firm of Lush has the original.

[fol. 381] Q. Well, who did you deliver it to after you signed it?

A. Mr. Clinkenbeard.

Q. And did you discuss this retainer contract with Mr. Clinkenbeard at or just before it was signed by you?

A. Yes, but not to any extent. I also had in that contract that I reserved the right to deal with the railroad if I felt that they were going to be justifiable.

Q. In other words, you reserved the right to do your own negotiating with the railroad?

A. Yes.

Q. And subsequently did you exercise that right and do your own negotiating with the railroad?

A. I did.

Q. So the actual retainer contract then was nullified and it was never carried out and you never in fact had this firm represent you, is that correct?

A. No.

Q. Did Mr. Clinkenbeard at these conferences advise and persuade you to enter into this retainer contract?

Mr. Crill: Just a minute. We want to object to that as leading and suggestive and calling for a conclusion of the witness and not a statement of what was said or done.

Q. I'll withdraw the question. I would like, Mr. Olson, if you would relate as close as you can remember just what Mr. Clinkenbeard said to you in regard to this retainer contract.

A. Well, he informed me that he thought this firm [fol. 382] could probably get me more money than I could by dealing through the railroad myself.

Q. Is that to the best of your knowledge the statement he made to you?

A. Yes.

Q. You stated you had your leg amputated, did you not?

A. Yes, a complete disarticulation.

Q. And at the time that you were in the hospital did you suffer any shock from this accident?

A. Well, that I really couldn't say. You'd probably have to ask my doctor. I thought I was doing pretty good but a lot of people thought I was a little goofey there for a while.

Q. Were they giving you any medicine or drugs while you were in the hospital?

A. About 24 hours a day.

Q. Did you suffer much loss of blood from the loss of this leg?

A. According to Dr. Williams it was 13 pints.

Q. Were you weak while you were in the hospital?

A. Oh, yes.

Q. Did you read this retainer of contract before you signed it?

A. I imagine I did. I might have glanced at it, but it was—

Q. Who prepared—excuse me.

A. It was prepared by Mr. Clinkenbeard; my wife typed it up.

Q. And when you say it was prepared by Mr. Clinkenbeard you mean he is the one—

A. (Interposing) He dictated it.

[fol. 383] Q. He dictated it to your wife.

A. Yes.

Q. Did you understand at that time what percentage the law firm was to get under this retainer agreement?

A. Well, I had an idea, but I didn't know exactly what it would be.

Q. Did you ask the law firm to return this retainer contract to you after you had signed it?

A. Yes.

Q. And how did you make this request?

A. By registered letter.

Q. Was the contract ever returned to you?

A. No.

Q. Were you ever contacted by any member of this law firm of Mr. Lush and Mr. Crill after you advised them that you did not want to hire or retain their services?

A. Well, I had a phone call and they wanted to know

why I changed my mind and I told them I was going to try and negotiate myself.

Q. Now by "they" who do you mean? Did the person identify himself over the phone?

A. They did but I don't remember who it was. It was one of the members of the firm I believe.

Q. Was it a long distance call or a local call?

A. Long distance call.

Q. So you have no reason to doubt it was some member of that firm.

[fol. 384] A. Yes, I'm sure it was.

Q. Did Mr. Clinkenbeard ever consult you after you made this request to the law firm to return to you your retainer contract?

A. I couldn't answer that truthfully. I wouldn't want to say.

Q. Did you ever know Mr. Clinkenbeard prior to the time of this accident?

A. No.

Q. Did you ever request that he come and see you?

A. No.

Q. Did you ever ask anybody else to send Mr. Clinkenbeard to see you?

A. No.

Q. Did you know any member of the law firm of which Mr. Crill and Mr. Lush are a member of that private law firm?

A. No.

Q. Did you ever request that they come and see you?

A. I don't believe so.

Q. Did you ever receive any letter from the Brotherhood of Railroad Trainmen regarding your accident?

A. Yes. This is it.

Mr. Beal: Would you mark this, please?

(The reporter marked Plf. Ex. A for identification.)

Q. I will hand you now what has been marked Plaintiff's Exhibit A and ask you if that is the letter which you have just referred to?

[fol. 385] A. Yes.

Q. Would you examine it, please? (witness looks over exhibit). Is this the letter then that you received from the Brotherhood of Railroad Trainmen?

A. Yes.

Q. And how was that received by you?

A. I believe it was sent to my home and my wife brought it to the hospital.

Q. Was it in an envelope?

A. Yes.

Q. Was it sealed or opened?

A. Sealed.

Q. Then can you state positively whether or not this is the letter?

A. That is the letter.

Mr. Beal: At this time the plaintiff would make a request that Plaintiff's Exhibit A be withdrawn from evidence and a photostatic copy of said letter be marked and inserted in place thereof.

Mr. Lush: Let us read it but I believe we will have no objection.

OFFER IN EVIDENCE

Mr. Beal: It would appear that Exhibit A has not been offered into evidence and at this time plaintiff would like to offer into evidence Plaintiff's Exhibit A.

Mr. Crill: Well, we understand any objections will be reserved for ruling by the trial court, if there are any.

Mr. Beal: That is my understanding of the Virginia [fol. 386] procedure.

Mr. Crill: And we have no objection to the substituting of a copy and having it marked for the original Plaintiff's Exhibit A.

Q. Mr. Olsen, did you at any time request your wife to ask any of these people which we have mentioned here to come and see you?

A. No.

Q. Do you have any knowledge of whether or not your wife did in fact ask these people to come and see you?

A. I don't believe she did but I couldn't say for sure.

Q. I will ask you, Mr. Olsen, if you will waive the right of reading and signing this deposition?

A. Yes.

Mr. Beal: That is all the plaintiff has.

Cross examination.

By Mr. Crill:

Q. Mr. Olsen, you mentioned the fact that Mr. Ballieu and Mr. Clinkenbeard were out to see you at the hospital.

A. Yes.

Q. And we haven't identified who Mr. Ballieu is I believe. He is the local chairman, is he not, of the lodge of the Brotherhood of Railroad Trainmen to which you belong?

A. That is right.

Q. And he came out there to see you and Mr. Clinkenbeard also came out to see you.

[fol. 387] A. That's right.

Q. And at that time you said they advised you of your rights and I assume by that that they told you that you were entitled to the services of the legal aid of the Brotherhood of Railroad Trainmen and were entitled to have an investigation made if you so desired it by the investigators of the Brotherhood of Railroad Trainmen, is that correct?

A. True.

Q. And at a subsequent time, if not at the hospital, you were advised that there were attorneys who had been designated as regional or legal counsel who were available if you desired them?

A. Right.

Q. As I understand it you were never contacted by any member of the firm of Davis & Lush until after you had written this letter to them, is that correct?

A. Right.

Q. Now may I ask this: was it not true that you were being visited at the hospital by claim agents or claim men of the railroad company before Mr. Ballieu and before Mr. Clinkenbeard ever came out to see you?

A. Yes.

Q. And that you were seen by claim men of the railroad company subsequent to your seeing Mr. Ballieu and Mr. Clinkenbeard also relative to this case?

A. Yes.

[fol. 388] Q. And is it true that when Clinkenbeard and Ballieu saw you at the hospital the first time that you told Mr. Ballieu and Mr. Clinkenbeard that you had told the claim man that you wouldn't talk to anybody about your case until the claim man had come back and had a chance to discuss settlement with you?

A. Yes.

Q. And after you had told Mr. Clinkenbeard and Mr. Ballieu that they then left and didn't come back for approximately a week I believe you said?

A. Yes. I believe that's right.

Q. Now then I believe you said you then were seen later by Mr. Clinkenbeard and a letter was prepared that was sent to Mr. Lush, is that correct?

A. Correct.

Q. And that of course was with your consent, was it not?

A. Yes.

Q. And your wife you said typed that letter up.

A. That's true.

Q. And that was when you were home was it not, Mr. Olsen?

A. Yes.

Q. And you were not in shock or anything of that sort at that time?

A. Well, I wasn't in shock but I was still under drugs and sedatives.

Q. You understood when you wrote this letter that conditionally you were asking Mr. Lush to appear for you in [fol. 389] this case but reserving to yourself the right to negotiate for settlement with the claim man.

A. Very true.

Q. And the claim man was to come back, you were to talk to him and decide whether you wanted Mr. Lush to go ahead conclusively, or whether you wanted to settle up with the railroad.

A. Right.

Q. And isn't it also true that you subsequently wrote another letter to Mr. Lush wherein you advised him to disregard the last paragraph of your letter wherein you reserved the right to negotiate with the railroad?

A. Not to my knowledge I didn't. I may have.

Q. And as a matter of fact on August 18th, 1959, didn't you so write and sign a typewritten letter to Mr. Lush of Davis & Lush removing the reservation in the last paragraph of the original letter requesting employment, or don't you remember.

A. Well, I didn't write. I wrote one letter.

Q. That was August 5th or 6th?

A. Telling Mr. Lush to disregard.

Q. No, that was later. The first letter you wrote, the one with the reservation in, that was around August 5th or 6th.

A. That's the one Mr. Clinkenbeard typed, or dictated.

Q. Then you remember when McNurlan came back with Clinkenbeard that you've talked about here?

A. Yes.

Q. And that was about August 17th or 18th, was it not?

[fol. 390] A. I couldn't tell you about the dates.

Q. Does that seem about a month afterwards that they came back?

Mr. Lush: It would be 2 weeks.

Mr. Crill: The accident was on the 17th.

Mr. Lush: It was 2 weeks after the 5th or 6th when he first saw them.

Q. Yes, it was about 2 weeks after that but it was about a month after the injury. And do you remember that the claim man was supposed to come to your place by I think 5 o'clock in the afternoon and that Mr. Clinkenbeard was at the hotel and that you called in the afternoon and you said that he hadn't come and to hell with it, that you were going to let Mr. Lush go ahead and take care of it, and that then they went out to your house and a letter was typed up and you signed it saying that you were withdrawing the last paragraph of your original letter requesting employment and to proceed with the case, Do you remember it or not?

A. I couldn't tell you.

Q. And then later a month after that, a little less than a month after that, about September 12th, then you wrote to Mr. Lush and asked him to discontinue proceeding with your case. You remember that, don't you?

A. I remember writing, that I did that, but I couldn't tell you whether it was a month or two.

Q. And may I ask you this: between the time you wrote to Mr. Lush saying that you did not desire him to go ahead [fol. 391] with the employment had the representatives of the railroad been to see you?

A. Yes.

Q. And would you tell us who from the railroad company had seen you between the time that you had—well, let's take it from when you were in the hospital on down, what people from the railroad company have seen you?

A. Do you mean the officials?

Q. Claim men and things of that sort.

A. Lau Brod and Gordon Danielson as claim agents.

Q. All right, who else have seen you subsequent to your injury besides them?

A. Well, the superintendent came up to see me. I mean it was no business, it was just a personal friendship.

Q. And what's his name?

A. (long pause).

Mr. Lush: I think it starts with a W.

A. No, he wasn't there that time.

Q. Well, superintendent, was it?

A. Yes, I can't think of his name but I know him real well. Hennigan is his name.

Q. And anyone else from the railroad who has seen you since your injury?

A. That was the assistant superintendent. The superintendent from Chadron was out to see me.

Q. Do you remember his name?

[fol. 392] A. No, I don't. I don't recall his name.

Q. Did anyone from the railroad company before you wrote Mr. Lush discontinuing his services advise you that Mr. Lush had instituted a lawsuit against the railroad for you?

A. To my knowledge that was the way it was, but I have no knowledge of law practices, or how you go about them.

Q. Well, I realize that but what I'm getting at is somebody did tell you that though?

A. I wouldn't say that they had told me. I may have took it that way. I don't know, they told me there was some action being taken in the state of Illinois. That's the way I'll put it.

Q. And you were subsequently advised I believe by Mr. Lush's office that a notice of lien had been filed and that no action has been instituted, is that not right?

A. That's true.

Q. May I ask who talked with you and discussed with you the proposition of sending a notice to Mr. Lush that you were discontinuing his services?

A. No. No one.

Q. I say who.

A. No one.

Q. Was any discussion had with any of the claim men relative to the proposition of making a settlement without Mr. Lush's services?

A. Well, yes.

[fol. 393] Q. And who was it that talked to you about that?

A. Mr. Danielson.

Q. Has Vern Smith ever been in here to see you from Omaha?

A. No.

Q. And what did they tell you, this representative of the railroad company, what did they tell you about the proposition of making a settlement with you if you would discontinue Mr. Lush's services?

Mr. Beal: I will for the record object to this question and all other questions along this line for the reason that they were immaterial, irrelevant and incompetent for any purpose.

Q. Now go ahead and answer.

A. Would you repeat the question?

Q. Will you tell us what they told you or what discussion the claim man had with you as to what they would do

with making a settlement if you discontinued the employment of Mr. Lush?

A. Well, they told me that they would like to have me wait and see what they had to offer until I was better, and such, and that if they didn't meet my demands then I should get ahold of you boys.

Q. Now counsel has referred to your signing a contract with Mr. Lush. Now isn't it true, and this is getting into the legal technology possibly, Mr. Olsen, but isn't it true that what you sent to Mr. Lush was a letter that he handle your case with the reservation that we have already discussed about?

[fol. 394] A. Well, it was a letter, yes, prepared by Mr. Clinkenbeard.

Q. And typed by your wife.

A. Yes.

Q. And that letter requested the employment of Mr. Lush.

A. That's right.

Q. And you don't remember that second contract, or second letter you wrote about it?

A. No, I don't.

Q. The firm that you were dealing with was Davis & Lush, was it not?

A. I believe so, yes.

Q. Counsel referred to Crill & Lush. Mr. Crill worked for Mr. Lush at that time I believe but was not a member of the firm.

A. Well, I didn't know either way.

Q. You were agreeable to seeing Mr. Ballieu and Mr. Clinkenbeard as representatives of the Brotherhood of Railroad Trainmen?

A. Yes.

Q. They didn't force themselves on you?

A. No.

Q. You were glad to discuss your case and determine all the facts and the help that you could get.

A. True.

Q. And Mr. McNurlan did make an investigation of your case, interview witnesses, made a complete file and also

advised you of what he'd ascertained and found, did he not?

A. That's true.

[fol. 395] Q. And you have never been charged or any bill sent to you for that service?

A. No.

Q. That is correct that you have not?

A. I have not been sent a bill.

Mr. Crill: I want the record to show that while I was reviewing my notes here that counsel who is appearing here for the plaintiff, if you call it the plaintiff, is consulting with the witness and we object to that during our cross examination.

Q. Mr. Olsen, you have given the railroad company, and that's the Chicago and North Western Railroad Company, I don't believe that's in the record, a statement have you not as to the facts of the accident?

A. Yes.

Q. Was this statement given before settlement was made with you?

A. Well, it was given I'd say at the same time. I mean the settlement was given the same time.

Q. And was it part of the understanding of your settlement that you would give them a statement?

A. Yes.

Q. And can you tell me who took the statement?

Mr. Beal: Just a minute. I'll object to all this as immaterial and irrelevant; incompetent.

Q. You may answer.

A. It was either Lau Brod or Gordon Danielson, one of [fol. 396] the two. I don't recall.

Q. They are the claim men that you have referred to here prior.

A. I believe it was Mr. Danielson.

Q. Who did the negotiating with you as to the amount for which your case might be settled?

A. Mr. Brod.

Q. And where does he live?

A. Huron.

Q. And what was the amount of your settlement?

A. I—

Mr. Beal: Objected to as immaterial and irrelevant.

A. I don't recall.

Mr. Crill: That's all.

Redirect examination.

By Mr. Beal:

Q. Now, Mr. Olsen, you appeared here today pursuant to a subpoena, is that correct?

A. That's correct.

Q. There has been some other conversations about some other letters that may or may not have been written from your home to this law firm of Davis & Lush, and you said you didn't remember them or didn't recall them, is that correct?

A. The only ones I recall are the two; one that Mr. Clinkenbeard dictated and one I wrote requesting Mr. Lush to let me handle the negotiations.

Q. Now were you still under a doctor's care while you [fol. 397] were at home just shortly after you were removed from the hospital?

A. Yes.

Q. Were you taking medication?

A. Yes.

Q. Do you know what medication if any you were taking?

A. Oh, I was taking pain pills, aspirins, and a number of them. I don't know. I had bottles and bottles.

Q. Did these medicines and drugs have any effect on your faculties to your knowledge?

A. That I wouldn't be able to say. You could consult the doctor.

Q. Now there is some testimony here about what railroad claim agents stated to you in settling your claim, is that correct?

A. Would you repeat that, please?

Q. I'll withdraw the question. There was some question here as to what railroad claim agents had visited you

during the interim that you were visited by Mr. Clinkenbeard and others, is that correct?

A. Yes.

Q. And there was some discussion as to what they said to you, is that correct?

A. That is correct.

Q. Now did you state that what you were told by Mr. Danielson was to wait and see what kind of an offer the railroad would make to you prior to having counsel?

A. That's true.

Q. Did anybody on behalf of the railroad ever state to [fol. 398] you that you should fire this law firm and not have them represent you?

A. No.

Q. Did anybody attempt to visit you and talk to you last night, the night before taking this deposition?

A. Well, there were a lot of people talked to me last night.

Q. Did Mr. Crill call you last night and ask to visit with you?

A. Yes.

Q. Did you visit with him?

A. Well, yes, I did.

Mr. Beal: That's all.

Recross examination.

By Mr. Crill:

Q. That was agreeable with you, Mr. Olsen, for me to talk with you?

A. That's right.

Q. We had a talk and I believe I had dinner at your restaurant, did I not?

A. That's true.

Q. This medication that you were taking was medicine that had been prescribed by the doctor?

A. Yes. They were prescription medicines.

Q. And your wife was present I believe at all the times that Clinkenbeard or the other men were talking to you?

A. To my knowledge she was.

Q. And you understood the information you were getting and were glad to receive it, is that true?

[fol. 399] A. True. In a situation like that you need all the information you can get.

Q. The question was asked about whether you were told to fire Mr. Lush of the firm of Davis & Lush and you said that you were not told by the railroad people. Is it correct that the railroad company representatives advised that they could not proceed to discuss the case, a settlement of the case with you unless you did get Mr. Lush no longer representing you? A. No. They didn't.

Q. Did they know or had you told them that you sent this letter to Mr. Lush?

A. Yes.

Q. And that you had been in contact with Mr. Lush's office relative to his employment.

A. Right.

Q. And I believe also that the notice of lien had been filed and you had heard about the notice of the lien being filed before you wrote Mr. Lush that you no longer wanted him to handle the case.

A. That's true.

Mr. Crill: That's all.

Mr. Beal: That's all.

(Witness excused.)

Bette J. Olsen called as a witness, and having been first duly sworn, testified as follows:

[fol. 400] Direct examination.

By Mr. Beal:

Q. Would you state your name, please?

A. Bette J. Olsen.

Q. And you are the wife of Clifford D. Olsen?

A. Yes.

Q. And your husband was hurt in a railroad accident on July 17th, 1959, is that correct?

A. Yes.

Q. And was your husband confined to the St. Johns Hospital as a result of this accident?

A. Yes.

Q. I will ask you, Bette, to look at what has been marked as Plaintiff's Exhibit A. Now have you seen that letter before?

A. Yes, I have.

Q. And did that letter come to your house through the mail?

A. Un-hum. Yes, it did.

Q. Did you open it when you received it?

A. No.

Q. What did you do with it?

A. I imagine I took it to the hospital to Cliff.

Q. Did a Mr. Clinkenbeard and a Mr. Ballieu visit you and your husband shortly after the accident?

A. Yes.

Q. Where did they visit you?

A. At home.

[fol. 401] Q. Was that you first? Or was that while Cliff was still in the hospital?

A. Yes.

Q. They came to the house first.

A. If I remember right Mr. Clinkenbeard came to the house first and I was at home.

Q. And did you talk to him?

A. Yes, I did.

Q. And did you two then go up to the hospital?

A. No, I don't believe I went with Mr. Clinkenbeard to the hospital. I think he went up himself if I remember right.

Q. Let me ask you this: to the best of your recollection who first contacted you, Mr. Clinkenbeard or Mr. Ballieu?

A. I think it was Mr. Clinkenbeard.

Mr. Beal: Let the record show that I object to Mr. Crill nodding his head to the witness during the time I'm taking the deposition of this witness.

Mr. Crill: Let the record show that I smiled at Mrs. Olsen, or Bette as I know her, and shook my head because she is mistaken on that as the record shows.

Mr. Beal: I'll object to what the record shows or doesn't show.

Q. Now unfortunately, Mrs. Olsen, you didn't hear your husband's testimony but your husband testified to some letters being written to a law firm of Davis & Lush and I believe the testimony was that these letters were typed by you, is that correct?

[fol. 402] A. Yes.

Q. And who dictated the letter to you?

A. Mr. Clinkenbeard.

Q. Was the letter typed as dictated by Mr. Clinkenbeard?

A. Yes.

Q. Was there any additions or deletions from what Mr. Clinkenbeard dictated to you?

A. None that I know of, no, as I recall.

Q. In one letter to Davis and Lush was a reservation placed in the letter whereby you and your husband were reserving the right to negotiate with the railroad company?

A. That's correct, yes.

Q. And did Mr. Clinkenbeard insert that in the letter?

A. Yes, he did.

Q. And did anybody to your knowledge insist upon this provision being in the letter?

A. Yes. I did.

Q. And then that letter was prepared that way.

A. Yes.

Q. Now did you know Mr. Clinkenbeard prior to the time he came to see you at your house?

A. No, I didn't.

Q. Did a Mr. Ballieu sometime come and see you?

A. Yes.

Q. Did you know Mr. Ballieu before that?

[fol. 403] A. No.

Q. And do you know who Mr. Ballieu is now?

A. Yes.

Q. And what is his occupation or profession? Who does he work for?

A. Right now at this certain time?

Q. Right at that time.

A. At that time?

Q. Yes.

A. Well, I'm quite sure he was working for the railroad.

Q. Did you at any time request or have anybody else request on your behalf that Mr. Clinkenbeard or Mr. Ballieu come and see you?

A. No.

Q. Were there any discussions held between Mr. Clinkenbeard and Mr. Olsen or Mr. Clinkenbeard and Mr. Olsen and yourself regarding the retaining of this law firm in Minneapolis to represent you and your husband?

A. Yes.

Q. And when was the first discussion held at which you were present, approximately?

A. Well, this I—

Q. Let me ask you this: was there a discussion in which Mr. Clinkenbeard was present while Cliff was in the hospital to the best of your recollection?

Mr. Crill: Now are you talking about discussions of [fol. 404] the contract or just the discussion.

Mr. Beal: Just the discussion right now.

A. Well, yes.

Q. At the hospital?

A. I can't recall that, no.

Q. Let me ask you this: were you present at any discussions at which Mr. Olsen was present and Mr. Clinkenbeard was present while Cliff was in the hospital, or shortly after he was out of the hospital at home, when a discussion was had regarding whether or not you should hire the Minneapolis firm to represent you?

A. Well, this is—yes, there were discussions but whether this was discussed before Cliff was out of the hospital I'm not sure. I can't remember.

Q. It was discussed at the hospital or at your home but you're not sure of the dates, is that correct?

A. Yes, that's correct.

Q. Do you recall the general substance of the conversation at that time between Mr. Clinkenbeard on the one part and you and Mr. Olsen, your husband, on the other?

A. Well, I can recall the general trend of the conversation. Yes.

Q. Would you repeat that general trend to the best of your knowledge?

A. Definitely it was to do with this injury and what he thought that he would like to do in settling with the railroad, and so on and so forth.

[fol. 405] Q. And what if anything did Mr. Clinkenbeard state to that?

A. I'm supposed to remember that far back?

Q. If you remember. Do you remember?

A. Well, as far as any certain statement that was made, or answer, I couldn't possibly recall that.

Q. Do you recall any substance of the conversation or the statements of Mr. Clinkenbeard?

A. Well, I do remember him talking with Cliff and I both about considering different possibilities, and so on and so forth, and (no further answer).

Q. Do you recall the substance of any statements regarding the retaining of the law firm of Davis & Lush to represent you?

A. Well, yes.

Q. What was the gist of his statements to the best of your recollection?

A. If I remember right I think that they were mentioned in the way that they would be the logical help if we needed any help.

Q. And you are appearing here under subpoena, is that right, Bette, to testify?

A. Yes, I am.

Q. To the best of your recollection, Bette, you never solicited or requested Mr. Clinkenbeard or any others to come and visit with either you or Cliff about this accident, is that correct?

A. That's correct.

Mr. Beal: I think that's all.

Cross examination.

[fol. 406] By Mr. Crill:

Q. Mrs. Olsen, Bette, this Mr. Ballieu did you understand that he was a local chairman or some officer of the Brotherhood of Railroad Trainmen?

A. Yes.

Q. And Mr. Olsen I believe has testified that he advised that Mr. Olsen was entitled to the help of the legal aid and to have an investigation done by the investigators of the Brotherhood of Railroad Trainmen if he desired, and also to employ the counsel who were recommended by the president of the Brotherhood of Railroad Trainmen. Is it your recollection that that was in substance part of the conversation that was had by Mr. Ballieu and Mr. Clinkenbeard with you and your husband?

A. Well, quite frankly I can't really remember but I would say that this was in partial right.

Q. And do you remember that Mr. McNurlan, an investigator of the brotherhood, did come and did make an investigation of Cliff's case; is that not true?

A. This is true.

Q. And he discussed I believe with you and with Cliff—Mr. Olsen—what his findings were and what he had ascertained, is that not true?

A. Right.

Q. The letter you sent, or typed I should say, to Mr. Lush was a letter as you remember, was it not, signed by [fol. 407] your husband requesting that Mr. Lush represent him but reserving to your husband the right to discuss the matter of settlement with the railroad.

A. Right.

Q. And is it not true that later another letter was sent, and I think this was about two weeks after the letter with the reservation, that another letter was sent, and that was the time that Mr. McNurlan and Mr. Clinkenbeard were out here, another letter was sent withdrawing the reservation; do you remember that? Well, let me state this: do you remember of Mr. Clinkenbeard and Mr. McNurlan coming out to your home and talking with you

and that the claim man was supposed to come back either that day or the next day by I think 5 o'clock or 3 o'clock in the afternoon, and then later that your husband called to the hotel and Mr. Clinkenbeard and Mr. McNurlan I believe, or one of them, came out and another letter was written to Mr. Lush saying that Cliff was withdrawing the reservation and wanted Mr. Lush to proceed with his case. Do you remember that second letter?

A. No, I don't believe so.

Q. Then subsequent to that there was another letter sent terminating the employment of Mr. Lush, was there not?

A. Yes.

Q. But you don't remember that letter in between.

A. No, I don't.

Q. Counsel has asked you whether a discussion was had [fol. 408] as to the possibility of employing Davis & Lush and you said that there was. Is it not true that in your discussion with Mr. Ballieu and Mr. Clinkenbeard, either one or both of them, that conversation was also had that you could hire another attorney or other attorneys rather than Davis & Lush if you so desired?

A. Yes.

Q. That is correct, is it not?

A. Yes, it is.

Q. And as far as you know no charge was ever made of any sort by either Mr. Lush or the brotherhood for the investigation or any of the work that was done in Mr. Olsen's case?

A. None that I know of.

Q. Now you were asked whether you had ever requested Mr. Clinkenbeard or any of the others to come out there to see you and you have testified that you had not or that Cliff had not as far as you know. This is true also, is it not as I believe your husband testified, that they were there with your consent and you were glad to discuss the case with them and have an investigation made and to receive help from Mr. Clinkenbeard and Mr. Ballieu, is that not correct?

A. Well, yes.

Q. And they were helpful in developing facts for you on the negligence and told you of the help that could be given on the thing; is that not correct?

A. Yes.

Q. Now during this period of time we've been talking [fol. 409] about the brotherhood representatives seeing you and Cliff Olsen, you were also being seen by claim men and representatives of the railroad company, were you not?

A. Yes.

Q. And they came and discussed the case with you and later discussed settlement with you and your husband, is that not true?

A. Yes.

Q. And you did not request them to come to see you or Cliff either, did you?

A. No.

Q. They were welcome the same as Mr. Clinkenbeard and the same as Mr. Ballieu were welcome, is that true?

A. Yes.

Q. There were other railroad men besides Mr. Clinkenbeard and Mr. Ballieu that came to see Cliff and to talk to you during the time he was in the hospital and when he was home, is that not true? As visitors I'm talking about.

A. You mean men from the railroad itself?

Q. Yes.

A. Oh, yes.

Q. In other words, he had people coming out to see him at the hospital and at home who were employed by the Chicago & North Western Railway besides the claim agents and besides these brotherhood representatives that we've talked about.

A. Yes.

Q. And your husband during this time, and I don't be- [fol. 410] lieve I asked him that, during this time your husband was a member of the Brotherhood of Railroad Trainmen, was he not, during all the time he was in the hospital and subsequent thereto when these conversations were had with Mr. Clinkenbeard and Mr. Ballieu?

A. Well, to be quite truthful with you I don't know.

Q. You don't know whether he is or not.
A. I don't. I never thought about it before.

Mr. Crill: I believe that's all.

Redirect examination.

By Mr. Beal:

Q. I'd like to ask one more question. Mrs. Olsen, you testified that Mr. Clinkenbeard advised you that you could hire some other lawyer if you wanted to, is that correct?
A. Yes.
Q. Did he express any definite preference to you as to who you should hire or retain?
A. I can't remember.

Mr. Lush: Off the record for a second. (Off record discussion was had.)
Mr. Crill: Respective counsel has discussed the proposition of calling Mr. Clifford Olsen back to have him answer the question whether he was a member of the Brotherhood of Railroad Trainmen at the time that he was injured and subsequent thereto, and it is agreed without calling Mr. Olsen back that he was a member of the Brotherhood of Railroad Trainmen.
[fol. 411] Mr. Beal: And this agreement on my part is based upon a prior conversation when I think Mr. Olsen expressed that he was, and also the letter introduced in evidence indicates that he was.
Mr. Beal: That's all.
Mr. Crill: That's all.
Mr. Beal: Mrs. Olsen, will you waive the right to read and sign this deposition?
A. Yes.

(Witness excused and hearing closed.)

Notary's certificate (omitted in printing).

[fol. 412]

NOTICE TO TAKE DEPOSITIONS (omitted in printing)

To Brotherhood of Railroad Trainmen:

* * * * * * *

[fol. 413]

PLAINTIFF'S EXHIBIT A

(Letterhead of Brotherhood of Railroad Trainmen, Cleveland 13, Ohio)

July 28, 1959

Re: Clifford Olson—Lodge 190
Application Pending

Mr. & Mrs. Clifford D. Olson
411 East Talent Street
Rapid City, South Dakota

Dear Folks:

You may wonder why I am addressing this letter to both of you, but the reason for doing so is because it concerns a matter which is of the greatest importance to both of you and your children and a great deal will depend upon your team work in determining what your future financial situation will be.

When you, Brother Olson, were so seriously injured on July 17, the President of your lodge, Brother C. R. Adkins, immediately wired the fact into Grand Lodge as a good alert Brotherhood officer should do and the wire was turned over to me.

Upon receipt of the news I immediately got on the telephone and got the word to our Brotherhood Investigator in your area, Brother G. A. Clinkenbeard, and I have received word from him that he has had the opportunity

to see you and advise you as to your rights. As you can see, your Brotherhood representatives both locally and here in Grand Lodge are very much interested in your welfare and all of us have done everything we could do to protect your interests up to a certain point. When that point has been reached we cannot go any further without the "go sign" from you. It will now be up to you and your good wife to talk the situation over thoroughly and decide what you believe will be the right move for you to make. This may perhaps be a difficult decision to reach for I know from my almost thirty years of experience in working in this department that there will be many people calling upon you and giving you all sorts of advice and among these, of course, will be the company claim agent and possibly some of the railroad officials.

These latter, naturally, have one thought in mind and that is protect their company and save their employer as much money as they possibly can. That is their job and if they don't put out every effort to fullfill that obligation, some of them might very shortly be numbered among the unemployed.

[fol. 414] Others who may call on you will, no doubt, tell you of this or that attorney, who according to the one telling the story, can perform miracles for you. On that score your Brotherhood, some thirty years ago, established a Legal Aid Department and appointed in various parts of the country attorneys whose records for honesty, integrity and ability had been thoroughly investigated and to whom our injured members and our widows and orphans can go and expect to get a square deal.

Our Brotherhood also saw fit to appoint Brotherhood members in various areas as Brotherhood Investigators. These investigators are railroad men with many years of experience and know all of the problems with which our members are confronted. Brother Clinkenbeard, who has already talked to you, is one of the best of these and you can rest assured that you can rely on whatever he tells you as being the truth.

I would suggest that it will be to your advantage to heed his advice. Keep in mind, above everything else, that it is you who has suffered these grievous injuries and it will be up to you to make the decision which will work out to your best advantage and the sooner you make that decision, the better for all concerned.

I have addressed this letter to your home instead of to the hospital to insure that there is no chance of it getting into the wrong hands and I sincerely hope you will keep what I am telling you in strictest confidence between you, your wife and your Brotherhood representatives.

Please understand that the Brotherhood or I personally have no financial interest in your case whatsoever. We do, however, want to see you get a square deal and we know you will get it if you will listen to the right people.

I will appreciate hearing from you and if there are any questions you may care to ask or any comments to make, please feel free to do so.

Hoping that you are coming along as well as can be expected, and with my very best wishes, I am,

Fraternally yours,

/s/ C. R. Maher

C. R. Maher, Chief Clerk
Legal Aid Department

CRM:JMC

cc: Mr. C. R. Adkins, Pres.
Mr. G. A. Clinkenbeard, Brotherhood Investigator

[fol. 415]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND, VIRGINIA

COMMONWEALTH OF VIRGINIA, ex rel., VIRGINIA STATE BAR, Complainant,

—vs.—

BROTHERHOOD OF RAILROAD TRAINMEN, et al., Defendants.

Deposition of Paul A. Hodges—June 22, 1961

The deposition of Paul A. Hodges, of the County of Wayne and State of Illinois, a witness of lawful age produced, sworn and examined, upon his corporeal oath, on the 22nd day of June, 1961, at the office of Kelley A. Loy, Second Floor, Fairfield National Bank Building, in the City of Fairfield, County of Wayne and State of Illinois, duly appointed by a notice, the original of which is attached hereto, for the examination of the said Paul A. Hodges as a witness in the above entitled cause now pending and undetermined in said Court. Paul A. Hodges took an oath previous to the commencement of his examination.

APPEARANCES:

Kelley A. Loy for Aubrey R. Bowles, Jr., Counsel for Complainant

and

Robert E. Harrington for Beecher E. Stallard, Counsel for the Brotherhood of Railroad Trainmen.

[fol. 416] The following oath was administered to PAUL A. HODGES: "Do you solemnly swear that you will tell the truth, the whole truth and nothing but the truth in the matter of The Commonwealth of Virginia, Complainant, against The Brotherhood of Railroad Trainmen pending

in the Chancery Court of The City of Richmond, Virginia, so help you God?"

A. I do.

Direct examination.

By Mr. Loy:

Q. Will you state your name?

A. Paul A. Hodges.

Q. Where do you live?

A. Sims, Illinois.

Q. That is in Wayne County, Illinois?

A. Yes, sir.

Q. How long have you lived in Wayne County, Illinois?

A. This time, 4 months the 17th of this month.

Q. Where did you live previous to that?

A. Anderson, Indiana.

Q. How old are you?

A. 40.

Q. Are you married?

A. Yes, sir.

Q. Is your wife here?

A. We are separated.

Q. She lives at 2319 Central Avenue, Anderson, Indiana?

A. That is the address to contact her at. Whether she lives there or not I don't know.

Q. That is the address of her son?

A. Yes, sir.

Q. She is not in Wayne County, Illinois, at this time?

A. Not that I know of.

Q. Are you working?

A. No, sir.

Q. How long has it been since you have worked?

[fol. 417] A. Right to the day it will be two years the 13th of August.

Q. What kind of work were you doing?

A. At that time I was a brakeman on the New York Central Big Four Branch.

Q. And working out of what station or district?

A. Working out of the South Anderson yards.

Q. In the State of Indiana?
A. Yes.
Q. And you were living in what town at that time?
A. Anderson.
Q. Anything happen that day you quit work, August 13, 1959?
A. Yes, sir. A train ran over my right leg and cut it off.
Q. And that was while you were working for the New York Central?
A. Yes.
Q. Were you a member at that time of the Brotherhood of Railroad Trainmen?
A. Yes, sir.
Q. And previous thereto?
A. Yes, sir.
Q. Where did they take you after the accident?
A. Marion Memorial Hospital, Marion, Indiana.
Q. How long did you stay there?
A. Five days.
Q. They amputated your leg?
A. Yes, sir.
Q. Did any member or official of the Brotherhood of Railroad Trainmen call on you at the Marion hospital?
A. Yes, sir. The local chairman, Fred Harmon.
Q. Did you know Fred Harmon?
A. Yes sir. I worked with him several times.
Q. And you knew he was an official of the Brotherhood?
[fol. 418] A. Yes, sir.
Q. By the Brotherhood, I mean the Brotherhood of Railroad Trainmen.
A. Yes, sir.
Q. Do you know what office he held at that time?
A. Local Chairman.
Q. Did you request that he come to see you?
A. No, sir.
Q. And where were you when he came to see you?
A. I was in a ward. They was two beds in it. An old man was in the other bed. I don't know who he was.
Q. Anyone else?
A. My wife, Betty.
Q. What did he say, if anything?

A. He got to talking about the legal aid—

Mr. Harrington: I object to what he says he said. He is not present.

A. He said that I should contact this Legal Aid of Chicago and sign a contract with them and that they could get me as high as $173,000.00 for this one leg.

By Mr. Loy:

Q. What else did he say?

A. Said he would make all the arrangements for us.

Q. What arrangements did you take that to mean?

A. I figured he meant contacting legal aid up there at Chicago and getting transportation to go up there and getting everything ready.

Q. Was anything said about what the legal aid was and what they did?

A. Yes, lawyers, and that was all they done was fight these cases where men was hurt.

Q. Fight these cases for whom?

A. Fight it for the Brotherhood.

Q. Do you remember anything else he said?

A. He said they would take twenty-five per cent of what I got.

[fol. 419] Q. Who would take twenty-five per cent?

A. Lawyers for the legal aid up there.

Q. What do you mean by "up there"?

A. Up there at Chicago.

Q. Did he say anything about his experience with accidents?

A. Right off hand I don't remember. That was quite awhile ago.

Q. Did he give you any advice about talking to anyone about the accident?

A. Yes. He said his advice was to sign a contract with the legal aid of Chicago.

Q. Did he say anything about what would happen if you didn't sign?

Mr. Harrington: I object. That is a leading question.

By Mr. Loy:

Q. Do you remember anything else he said.

A. He said if we didn't go through the legal aid I would end up getting nothing out of it.

Q. Do you remember anything else he said?

A. At the hospital? No.

Q. You don't recall anything else?

A. No. Yes, I do. He said that they might give me a shot and make me drowsy and then have some claim agent come in have me sign some kind of paper, a release paper.

Q. Did he say whom he meant by they would give you a shot?

A. I don't remember.

Q. Who did you think he meant?

A. I took it for granted them there at the hospital.

Q. Did anyone else come to see you while you were in the hospital at Marion, Indiana?

Mr. Harrington: I object unless we chain it down to the date that the person visited.

Mr. Loy: Let me re-phrase my question. Did you see any other persons connected with the Brotherhood of Railroad Trainmen while you were in the hospital at Marion, Indiana?

[fol. 420] A. Yes, Bob Morris.

Q. When did he come?

A. I believe that was about the third day I was in the hospital.

Q. Did you know him previous to that time?

A. Yes.

Q. Did you know he was a member of the Brotherhood of Railroad Trainmen?

A. Yes.

Q. Do you know whether he had any office in the Brotherhood?

A. If I remember right he was treasurer of the Brotherhood.

Q. That is the local lodge at Anderson?

A. Yes, sir.

Q. Where did he live?
A. At Anderson, Indiana.
Q. How far is Marion from Anderson?
A. Approximately twenty-five miles.
Q. Where did Mr. Harmon live?
A. Anderson.
Q. What did Mr. Morris say to you?
A. Bob Morris came up more or less as a friendly visit to see if I needed anything.
Q. Do you remember anything else he said?
A. Just carried on a friendly conversation. He was talking about my insurance I had with the Brotherhood, about what I had coming off of it.
Q. And do you recall anything else he said?
A. No, I don't.
Q. When you left the Marion Hospital, did you go home or where were you taken?
A. St. Johns Hospital at Anderson.
Q. How long did you stay there?
A. About two and one-half days.
[fol. 421] Q. Did anyone come to see you there?
A. Fred Harmon come again.
Q. Is that the same Fred Harmon who called before?
A. Yes, sir.
Q. What was said this time?
A. Just about the same thing he said up at Marion—

Mr. Harrington: I am going to object to that unless he can give at least an approximate date he was there.

A. I can tell you exactly, just a minute. I went to the Marion hospital the 13th of August. Fred came up on the next day, the 14th, and Robert Morris came up I think it was about the 15th. I was there five days and transferred to St. Johns on the 18th and the 19th Fred Harmon came back again to St. Johns at Anderson.

By Mr. Loy:

Q. And what he said to you you have repeated as far as you can recall?
A. Yes, sir.

Q. Where did you go from St. Johns Hospital in Anderson?

A. I went to 2319 Central Avenue, Anderson.

Q. What is there?

A. My step-son's home.

Q. Was that your residence where you were living?

A. No. At that time me and my wife was separated and we sold everything and I was staying at 200 Andover Road in Anderson and when I went to the hospital my wife came back and when I was released from the hospital we went to my step-son's at 2319 Central Avenue.

Q. That's in Anderson, Indiana?

A. Yes, sir.

Q. Did anyone from the Brotherhood come to see you there?

A. Fred Harmon came again.

Q. When was that?

A. About the 22nd of October.

[fol. 422] Q. What did he say?

A. The day I got out of the hospital, I had an old '53 Kaiser and my step-son took it and put it in his garage the same day I got hurt, and when I gets out of the hospital I goes out, backs it out and drives it around. He called and my daughter-in-law told him where I was at and he came down and he got on to me about me getting out and driving this car around and walking up and down the street on my crutches and saying that the railroad would be taking pictures of it and when I went up to the legal aid they would flash it on the screen and I would be lost.

Mr. Harrington: Who would flash it on the screen?

A. The railroad company.

By Mr. Loy:

Q. At the trial of the case?

A. Yes.

Q. What do you mean he got on you?

A. He got to telling me off about getting out and driving my car—

Q. Talking to you about it?

A. Yes, and about walking around on my crutches.

Q. Did he say anything about a contract?

A. Yes, he said he was making arrangements for me to go to Chicago and sign the contract with the legal aid and so they could take my case.

Q. Did he have anything with him?

A. No.

Q. No papers or anything with him?

A. No.

Q. Did he ever come again?

A. Yes, he came at least once a day.

Q. For how many days?

A. I was at my step-son's a week and then we moved to 1604 Brown Street and we lived there approximately 2 weeks.

Q. Did he come to see you when you were living at Brown Street?

[fol. 423] A. Yes, every day. At least once a day.

Q. Didn't miss a day?

A. No.

Q. What did you talk about?

A. About my case up with the legal aid, what I should be doing and what I shouldn't be doing.

Q. Can you be more explicit?

A. He said stay in the house and not get out where they could see me.

Q. Did you ever go to Chicago?

A. No.

Q. Did you make arrangements to go?

A. Yes, he called Mr. Henslee and made arrangements and told Mr. Henslee that he would have to have expenses.

Mr. Harrington: I am going to object to that unless he says who was present when the call was made.

By Mr. Loy:

Q. Who was present at the time he made that call?

A. Mr. Harmon, my wife and myself.

Q. And you could hear what Mr. Harmon said?

A. Yes.

Q. Could you hear what Mr. Henslee said?

A. No.

Q. Tell us what Mr. Harmon said?

A. He told Mr. Henslee he would have to have expenses. I don't remember the date he had set and to top it off I had to pay for the telephone call. He said he was going to reverse the charges but it come through on my bill and I had to pay for the call. After he got through talking on the phone he said it was all set up for me to go up there and wanted to know if we could take my car. By that time me and my wife was getting so aggravated with him pestering us all the time that we agreed to go.

Q. Did he say anything else?

[fol. 424] A. He wanted to know if we had a place to stay there and I said my daughter's over on Lake Shore Drive and he wanted to know if it would be all right after we got there for him to take my car and run around in it so we agreed to let him take my car and go to where he was going to stay and pick up us the next day so he said he would see us the next day and take us there.

Q. Was anything said about where you were going in Chicago except your daughter's home?

A. No, he never told the address of the legal aid.

Q. You mean the legal aid of the Brotherhood of Railroad Trainmen?

A. Yes.

Q. Do you remember anything else about his conversation with Chicago? Anything else he said?

A. No. It's been so long ago I have forgot a lot of it.

Q. What happened the next day?

A. He came back—

Q. Who?

A. Fred. That evening after he left it made me sick at my stomach and when Fred Harmon came back the next day my wife met him at the door.

Q. Were you there?

A. Yes.

Q. Could you hear her conversation?

A. Yes.

Q. Could you hear Mr. Harmon's conversation?

A. Part of it.

Q. What did she say and what did he say?

A. She told him she wasn't going to let him in the house because when he left I was a nervous wreck.

Q. Did you hear what he said?

A. I don't remember just what he did say.

Q. Then did he leave?

[fol. 425] A. Yes.

Q. Did you talk to him about anything after that?

A. No,

Q. Your wife described you as a nervous wreck. What did she mean by that?

A. I was already nervous because when I lost my right leg I figured I lost the best part of my body and then with a man like Fred Harmon telling you what you should do and what you shouldn't do I would go to pieces.

Q. How many times did you go to pieces?

A. Every day he would come and he was there every day.

Q. Tell us what you mean by going to pieces?

A. Nervous wreck, upset stomach and everything else.

Q. Did you have any other reason to get nervous except Mr. Harmon's actions?

A. His actions and the idea of losing my leg.

Q. Were you nervous when he wasn't there?

A. No, when he would leave I would finally get settled down.

Q. Did anybody else from the Brotherhood of Railroad Trainmen come to see you other than Mr. Morris and Mr. Harmon?

A. Yes, Bob Morris came to see me at my house.

Q. This is the same Mr. Morris that called on you at the hospital?

A. Yes.

Q. And how many times?

A. He called only twice. No, three times. This time he came there and asked me if I would like for him to contact Mr. Crago. That was before my wife ran Harmon off. And I said yes I could find out more about it.

Q. Who was Mr. Crago?

A. General Chairman of the Brotherhood.

Q. Where was he located?

A. Indianapolis, Indiana.

[fol. 426], Q. What happened when he came to see you?

A. He went by and picked up Bob Morris and they came to see me and Mr. Crago had the papers and he was talking to me.

Q. About what?

A. About the legal aid up there at Chicago.

Q. What did he say?

A. What they could do for me. He said they could get me $173,000.00 and it would be a long drawn out session and in the meantime if I needed any money they could get it for me so while they were there—

Q. Let's just forget that for a minute. Did you know Mr. Crago before?

A. No.

Q. And Mr. Morris introduced him as an officer?

A. Yes, sir.

Q. Did he have any papers with him?

A. In a briefcase.

Q. Did you see them?

A. I didn't have them in my hand but he took them out.

Q. Did he say what they were?

A. He said they were papers for me to sign to get the legal aid to take my case.

Q. Did he tell you anything else about the papers?

A. No.

Q. What did you say about the papers?

A. I was wanting to know all about them and he was getting ready to read them to me and another lawyer came in.

Q. But you didn't get to read the papers?

A. No.

Q. Tell us about the other lawyer.

A. The other lawyer came in in connection with an accident we had had.

Q. Who had?

[fol. 427] A. The train and the crew I was with.

Q. That is not the same accident where you lost your leg?

A. No.

Q. What did he say?

Mr. Harrington: Can we identify him?

A. I can't think of his name but he was from Anderson.

By Mr. Loy:

Q. Were Mr. Crago and Mr. Morris still there?

A. Yes.

Q. Was your wife there, too?

A. Yes.

Q. All right. Now tell us what he said.

A. He was asking me about the accident and I said the only thing I could tell you would be of more harm to you than help—

Q. You mean the other accident?

A. Yes.

Q. What else did he say?

A. He asked me some questions about my accident and if I had a lawyer and I said no and he gave me his card and said if I decided I needed a lawyer he would be glad to help me and would appreciate my business.

Q. Were Mr. Morris and Mr. Crago there?

A. Yes, but they didn't stay long after he got there.

Q. You mean shortly after this lawyer came in they left and then he left?

A. Yes.

Q. Did anyone else come to see you?

A. Not until I called the clerk at the train master's office and had him get ahold of the claim agent.

Q. Do you remember Fred Weber?

A. Yes, he came to see me.

Q. Who was he?

[fol. 428] A. A retired railroadman.

Q. Was he a member of the Brotherhood of Railroad Trainmen?

A. Yes.

Q. What did he say?

A. Practically the same thing that Fred Harmon and Crago and everybody else was saying.

Q. Was he an official of the Brotherhood at that time?

A. No.

Q. Remember anything else he told you?

A. He said he had had several high offices and he knowed how things like that worked and advised me to get ahold of legal aid in Chicago.

Q. You mentioned in the telephone conversation between Mr. Harmon and Mr. Henslee that Mr. Harmon said something about having to have expenses?

A. Yes, sir.

Q. Did he say anything to you about expenses?

A. Yes, he said I would have to have gas and oil and a place to stay and after we got up there we would get the money.

Q. Was anything else said any other time about having to have expenses?

A. Not to my knowledge at this time.

Q. Or money?

A. No.

Q. Do you remember anything about what he said about where you would get the money?

A. I think he said Mr. Henslee was supposed to provide it.

Mr. Harrington: I object and ask that it be stricken.

By Mr. Loy:

Q. You have mentioned Mr. Harmon, Mr. Crago, Mr. Morris and Mr. Weber. Did anyone else talk to you at any time or place who was connected with the Brotherhood of Railroad Trainmen about your case?

[fol. 429] A. Not to the best of my knowledge.

Cross examination.

By Mr. Harrington:

Q. Mr. Hodges, did anyone who was not connected with the Brotherhood of Railroad Trainmen talk to you about the accident?

A. The claim agent.

Q. When did you see the claims agent?

A. The date?

Q. If you know it or approximately when?

A. That would be pretty hard to remember.

Q. When did you settle your case?

A. I don't even remember the date on that.

Q. Who was the claims agent who came to see you?

A. Mr. McLean.

Q. Where was he from?

A. He was from Indianapolis.

Q. Do you know Mr. Greaser?

A. Yes, he was the first claim agent who came. The reason for that was when I called the clerk at the train master's office and asked him to get in touch with the claim agent—

Q. You don't remember when this happened?

A. No.

Q. It was after Mr. Greaser had seen you?

A. Yes.

Q. Had you at any time given a statement as to how your accident happened?

A. Yes.

Q. Did you give a statement to the claims agent on August 19, 1959 when you were in the hospital?

A. I believe I did.

Q. So you did see the claims agent when you were in the hospital?

[fol. 430] A. Yes.

Q. And didn't you also see him on the 20th and the 24th?

A. Not on business.

Q. What did he come to see you about?

A. To visit.

Q. In other words, he came to see you on three different occasions and on one occasion he took a statement from you.

A. Yes, and the other times he came on a visit.

Q. Wasn't it a fact that he came to see you after you got out of the hospital and took another statement?

A. No. The only time he came to the house he came to 2319 Central Avenue and loaned me $200.00. The railroad done that and I signed a receipt.

Q. And that receipt showed that it was to be deducted from your wages?

A. Yes, and they sure did.

Q. How many times did he loan you money?

A. Twice. The $200.00 this time and $20.00 another time. I got $49,780.00 out of it.

Q. Who else was present in the hospital when you gave your statement to Mr. Greaser?

A. My wife.

Q. How did he take that statement down, long hand, shorthand, court reporter, type it out or how?

A. I believe just in regular writing.

Q. Did you sign it?

A. Yes.

Q. Did you read it before you signed it?

A. I most certainly did.

Q. So you saw Mr. Greaser three times before you settled your case?

A. Yes.

Q. And you saw Mr. McLean on how many occasions?

[fol. 431] A. Three times.

Q. What did he discuss with you?

A. I done the discussing. See, I sent for the claim agent and Mr. McLean was on vacation and they sent Mr. Greaser.

Q. Did you ask Mr. Greaser to come back on the 20th of August?

A. No.

Q. Did you ask him to come back on the 21st?

A. No.

Q. Did you have visitors?

A. Yes.

Q. Did you settle your case on September 4, 1959?

A. Yes.

Q. Was that the day after Mr. Crago visited you at your home?

A. Yes.

Q. Did you tell Mr. Crago that you wanted to discuss it first with the claims agent before you went to Chicago?

A. Yes.

Q. And then he left?

A. Yes.

Q. What—wasn't it also a fact that you told Mr. Crago you were going to ask the claims department for $50,000.00 in settlement?

A. Yes.

Q. You stated that when Mr. Crago was in your home he had some papers there and he made some comment to the effect that you would have to sign some papers?

A. Yes. He took them out of the briefcase.

Q. What size were they?

A. About the size of the ones you have there.

Q. In other words, letter size?

A. Yes.

Q. Did he say anything about signing a contract?

[fol. 432] A. He said they would have to have a contract before they could handle the case.

Q. Who would have to have a contract?

A. The legal aid.

Q. He didn't say anything about you signing anything there?

A. No.

Q. Isn't it a fact that Mr. Crago advised you of the services of the legal aid? In other words, what they stood for?

A. Yes.

Q. And that you were entitled to their services?

A. Yes.

Q. And the charge for their services was twenty-five per cent?

A. I do remember Fred Harmon said it would be twenty-five per cent but I don't think Mr. Crago got that far into it.

Q. Who brought Mr. Crago?

A. Mr. Morris.

Q. When they came to your home did you ask them to leave?

A. No.

Q. Were you willing to discuss what they were there for?

A. Yes.

Q. But you had already told them you wanted to settle with the company first?

A. Yes.

Q. Did you tell Mr. Harmon to leave you alone?

A. Yes, just like I said my wife met him and told him I didn't want to see him.

Q. And that was the last time he came around?

A. Yes.

Q. Mr. Harmon was your local chairman?

A. Yes.

[fol. 433] Q. And Mr. Morris your secretary and took care of your insurance?

A. Yes. I collected $2,500.00 for it from the Brotherhood and that was his purpose, to let me know about that.

Q. Did you ever ask Mr. Morris to come to see you concerning the insurance?

A. I believe when he first—when I first took the policy out—

Q. I am referring to after the accident?

A. No.

Q. Did you at any time after your accident write a letter requesting someone from the legal aid department to visit you concerning the accident?

A. I never wrote nobody after the accident, not even to my own relations.

Q. You stated that Mr. Harmon made a phone call from your phone?

A. Yes.

Q. Do you know the date of that phone call?

A. No, not off hand.

Q. Approximately when it was, how soon after the accident?

A. Approximately 3 weeks.

Q. You didn't hear the voice on the other end of the phone?

A. No.

Q. Did you hear the phone number he called?

A. No, I never.

Q. Do you know of your own knowledge who he spoke to?

A. He just called him Mr. Henslee.

Q. Did you know Fred Weber?

A. I just knowed him meeting him on the street. He was retired when I went to work there.

Q. You were willing to go to Chicago until you got sick to your stomach after the time Mr. Harmon visited you, is that correct?

[fol. 434] A. Yes.

Q. And the following day you decided not to make the trip?

A. Yes.

Q. And that was the day you told him you didn't want to discuss it with him?

A. My wife told him.

Q. Am I incorrect in saying that you saw Mr. McLean about 3 times prior to your settlement?

A. Either 2 or 3.

Q. And you saw Mr. Greaser about 3 times?

A. Approximately 3 times. But 2 on visits and then when he took my statement and brought me the $200.00.

Q. Did he advise you at the hospital that you didn't have to make a statement?

A. Yes, he did.

Q. After your settlement did you see any more of the claims agents?

A. Yes, I saw them on the street several times when I went there to get my new leg fitted.

Q. Did you see anybody after the settlement with the Brotherhood of Railroad Trainmen?

Mr. Loy: I object to after he made his settlement.

A. I don't know but I think that is the man who took this statement here.

By Mr. Harrington:

Q. You mean the statement your attorney has here?

A. Yes.

Q. Do you know what his name is?

A. I do but I can't say it.

Q. Give us a try?

A. I can't even spell it.

Q. When did he come to see you?

A. It was at 143 Nursery Road.

[fol. 435] Q. When was that approximately?

A. About the middle of October, 1959.

Q. Did he show you his credentials?

Mr. Loy: I object to that. It has nothing to do with the issues in this case after the settlement.

By Mr. Harrington:

Q. Have you read that statement recently?
A. Yes.
Q. Did you read it today?
A. No.
Q. When did you last read it?
A. March or April of 1961.
Q. The purpose of reading it was to refresh your recollection?
A. Yes.
Q. And your testimony here today is basically what is in that statement?
A. Maybe not word for word but approximately the same thing.
Q. You saw this gentleman from the American Association of Railroads in August of 1959?
A. Yes.
Q. Who was present then?
A. My wife.
Q. Anyone else?
A. No.
Q. Did anyone come with him?
A. Didn't come in the house.
Q. Did anyone stay outside?
A. I didn't look.
Q. Did he show you his credentials from the American Association of Railroads?
A. No.
Q. You don't recall his name?
[fol. 436] A. No, sir.
Q. How many pages were in the statement he took?
A. Four.
Q. Typewritten?
A. Yes.
Q. Did he type it out in your presence?
A. Yes.
Q. You read it?
A. Yes.
Q. And signed it?
A. I signed it.
Q. How long did it take him to make the statement?

A. I don't know.

Q. Well, approximately?

A. He was there about 2 hours.

Q. Did he pay you for your time?

A. No. I wouldn't have took it any how.

Q. Did he offer to pay you?

A. No.

Q. Was that the only time you saw him?

A. Again awhile back when he came over to let me know about this meeting here.

Q. In other words, this gentleman from the American Association of Railroads told you about this deposition here?

A. He told me that Mr. Loy would notify or contact me about this thing.

Q. Did he tell you the purpose?

A. Briefly, yes.

Q. What did he tell you?

Mr. Loy: I object to that.

A. He said the Brotherhood was trying to break this up about boys getting hurt and being pestered.

Q. You came here freely on your own?

A. Yes.

[fol. 437] Q. He didn't pay you for your expenses in coming here?

A. No.

Q. How far is it?

A. Eleven miles.

Q. You have to pay this gentleman anything for bringing you up here?

A. No.

Q. Have you promised to pay him anything for bringing you up?

A. No.

Q. Can you tell us when you first knew you were going to have to come up here and give a deposition?

Mr. Loy: I object to that. It has nothing to do with the issues of this case or credibility of the witness.

A. I wasn't in too much of a shape to know.

Q. How long ago was he there?

A. March or April.

Q. Then you saw this gentleman from the American Association of Railroads on approximately two occasions?

A. Yes, sir.

Q. On the second occasion he brought with him the statement that he had taken in October, 1959?

A. Yes.

Q. And on that occasion you re-read that statement?

A. Yes.

Q. You are being paid nothing for your lost time or expenses for coming up here for this deposition?

A. Nothing whatsoever.

Q. This other attorney that you spoke about that visited you at your home, where was he from?

A. You mean the one connected with the other accident?

Q. Yes.

A. Anderson, Indiana.

Q. But he had no connection with your accident?

A. No. He was just out trying to drum him up some business.

[fol. 438] Q. Did you know Mr. Crago prior to your accident?

A. No.

Q. Had you heard of him?

A. Yes.

Q. He was an officer of your Brotherhood?

A. Yes.

Q. Has anyone from the New York Central contacted you concerning this deposition?

A. No.

Q. Did the gentleman from the American Association of Railroads advise you that he was there with the permission of the New York Central?

A. Yes.

Q. Did he have a letter to that effect?

A. I don't recall whether he did or not.

Q. Did anyone from the railroad after you settled your case take any further statements from you?

A. Not that I remember.

Q. The only statement you remember making after the

settlement was this gentleman from the American Association of Railroads?

A. Yes.

That is all.

Redirect examination.

By Mr. Loy:

Q. Are you a member of the Brotherhood of Railroad Trainmen at this time?

A. To the best of my knowledge, yes.

Q. Have you ever had any trouble with them?

A. No.

Q. I show you what is marked Complainant's Exhibit 1-a marked for identification and ask you to look it over.

(Witness takes document handed to him by Mr. Loy.)

[fol. 439] Q. Have you read it?

A. Yes.

Q. Have you noticed the signatures appearing thereon?

A. Yes, sir.

Q. What is that instrument?

A. That is a statement from me about my injuries.

Q. And is that the statement you were referring to when you were cross-examined by Mr. Harrington?

A. Yes.

Q. How long had it been since you read it prior to this day?

A. March or April.

Q. Will you look at the date on the last page?

A. January 12, 1960.

Q. Is that the date it was made?

A. Yes.

Q. You testified awhile ago it was October. Is that right?

A. That's when I thought it was.

Q. Is that statement true?

A. Yes.

Q. Did you look at the handwriting below the signature on the bottom of the page?

A. Yes, sir.

Q. Whose signature appears there?
A. My wife's.
Q. Did she sign this in your presence?
A. Yes, sir.
Q. And you signed each of the four preceding pages?
A. Yes, sir.

OFFER IN EVIDENCE

Mr. Loy: I offer in evidence Complainant's Exhibit 1 for identification, together with Exhibit 1-A being a photostatic copy of 1.

Mr. Harrington: I object to it being offered on the [fol. 440] grounds that the party who took the statement is not present to present its self-serving contents of said instrument, hearsay and it has no bearing on this deposition.

Mr. Loy: I ask leave to have withdrawn Exhibit 1-A, the photostatic copy, from the Clerk's Office at Richmond, Virginia.

Mr. Harrington: It will be attached to the deposition?

Mr. Loy: Yes.

Mr. Harrington: All right.

Mr. Loy: One point I would like to clear up, Mr. Hodges, did the conversation you had with Mr. Crago happen after you had made the settlement with the railroad company or before?

A. Before.

Q. Was your conversation with Mr. Crago before or after Mr. Harmon called Chicago?

A. After.

Recross examination.

Mr. Harrington:

Q. Mr. Morris told you about Mr. Crago when he came to see you?

A. Yes. He also told me he would bring him later on if I wished him to because I wanted to find out about this legal aid.

Q. So it was at your request that he came, is that right?

A. Yes. The only complaint I have is Fred Harmon.

Q. Is that only because he visited you so often?

A. Yes. I think you will find in that statement that Bob Morris or Crago neither one high-pressured me.

Q. How long had Mr. Harmon been local chairman?

A. About 5 or 6 months.

That is all.

Mr. Loy: One more question. You stated that your complaint was about Mr. Harmon and it was the number of times Mr. Harmon called on you you were complaining about. Was there anything else?

[fol. 441] A. And his pestering.

Q. What do you mean by pestering?

A. Running to the hospital and trying to get me to go to Chicago and get legal aid.

Q. Was it the number of times or what he said that bothered you?

A. It was the number of times. I could look for him every day.

Q. Did he say about the same thing every day.

A. Yes, sir. Every day.

Q. When you told him not to bother you any more, did he stop?

A. Yes.

Mr. Loy: Let us read this into evidence. Mr. Harrington and I understand that the rule in Virginia is that if Mr. Harrington wants a copy of the deposition that he is to pay one-half of the charge of the Notary Public for taking the deposition plus one-half of the charges for the original and the entire charge of any copies that he may order.

Mr. Harrington: The above statement of Mr. Loy is correct as far as what we know the rule in Virginia is. We have been advised by the attorney for the Complainant that that is the law of Virginia and on that basis we agree to these payments but will look for reimbursement by the attorney for the Complainant if this is not correct.

Mr. Loy: Mr. Harrington waives receiving a copy of the exhibits.

Mr. Harrington: Right.

[fol. 442] Notary's Certificate (omitted in printing).

[fol. 444]

COMPLAINANT'S EXHIBIT 1

My name is Paul A. Hodges. I live at 143 Nursery Road, Anderson, Indiana with my wife, Betty, and one of our six children. I am thirty-eight years of age. My social security number is 356-16-9541. I am not presently employed at any occupation.

On August 13, 1959 I suffered the loss of my right leg above the knee while switching cars for the New York Central Railroad at Marion, Indiana. I was employed by the New York Central as a road freight brakeman at the time of the accident. I was hospitalized for five days at Marion General Hospital in Marion, Indiana. I was transferred to St. John Hospital in Anderson, Indiana for three days and then discharged to my home at 2319 Central Avenue, Anderson, Indiana.

Within one or two days after the accident a man named Fred Harmon came to see me at the hospital in Marion, Indiana. Fred Harmon is the local chairman of the Brotherhood of Railroad Trainmen Lodge Number 318. I knew Harmon from having worked with him on the New York Central. I had not asked him to come see me and I was not expecting him. My wife, Betty, was with me at all times when Harmon was there. I was in a two bed ward with another man who was quite elderly. I don't know his name or where he was from. Harmon told me that he knew a lot about injury cases and that he knew who to get a hold of to get things started. He said that I and my wife should just trust him and he would take care of everything. Harmon warned me that the hospital would give me a shot to make me groggy and then the claim agent for the railroad would come in and have me sign something and I wouldn't get any money. He said I wouldn't get any money anyway unless I signed with the legal aid lawyers in Chicago. He said these lawyers had to keep pushing the railroads to get them to settle. Harmon told

/s/ PAUL A. HODGES

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[fol. 445] me that if the legal aid lawyers in Chicago handled my case I would get One Hundred Seventy-three Thousand Dollars ($173,000.). Mr. Harmon talked to my

wife and I about going to Chicago to sign a contract with the legal aid lawyers but I don't remember whether he said this to me when he visited me at the hospital or when he came to see me at my home.

Bob Morris, a fellow employee and the secretary of BRT lodge No. 318, came to see me at the hospital also. Morris talked to me about my BRT insurance but not about hiring the legal aid lawyers.

Fred Harmon came to see me at St. Johns Hospital in Anderson. I remember that he said about the same things to me when he visited me at St. Johns Hospital as he had said to me at Marion General Hospital.

About the second day after I had been discharged from the hospital to my home at 2319 Central Avenue (we were staying with my step-son, Jimmy Simmons at that time) Fred Harmon came to see me again. He talked more about going to Chicago to sign a contract with the legal aid lawyers and get things started. My wife and I used to go out for a drive in my auto and when we returned Mrs. Simmons would tell us that Fred Harmon had telephoned for me. We would never call him back because we knew what he wanted.

We were only at 2319 Central Avenue about a week and then we rented a place at 1604 Brown Street. Fred Harmon came to see us right at that place. He told me not to let anyone see me using the crutches and that I should stay in the house. He also said that I shouldn't let anyone see me driving my auto. He said that the railroad would take pictures of me. One day when my wife and I had been out for a drive in my auto we came home to find Harmon waiting for us. He asked: "Where the hell have you been?"

/s/ PAUL A. HODGES

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[fol. 446] He told us that the railroad had been taking pictures of me and that they had photos of me driving my auto and using my crutches and that when my case came to trial in Chicago the railroad would flash those pictures of me up on a screen while the trial was going on and I wouldn't stand much of a chance then. Harmon once told us: "I guess you know how much work I'm going to be missing on account of helping you out." He kept telling us

not to go out of the house and it made me so nervous that I would get an upset stomach from it. My wife even go so that she felt she shouldn't even leave the house to shop for groceries.

Harmon told us that the Brotherhood would advance us money to live on until the case was settled. He said we could have any whenever we needed it. We got so tired of having him coming over to the house all of the time that we finally agreed to go to Chicago and talk with the legal aid lawyers. Harmon telephoned the legal aid law firm in Chicago on our telephone. I remember that he asked for a Mr. Henslee. Harmon arranged for us all to go up to Chicago and arrive on a Monday. He asked if we had a place to stay in Chicago. We told him that we could stay at our daughter's place. He then asked if he could use our auto to run around in while we were there. Harmon told this Mr. Henslee on the phone that he would have to have some money for expenses but he never told us that he would pay our expenses. After Harmon left both my wife and I became nervous and upset and decided not to go to Chicago. When Harmon came to the door to go to Chicago with us my wife met him at the door and told him we weren't going. My wife told him that I became sick every time he had been here and that she wasn't going to let him in the house. He never came to see us again after that happened. Harmon had come to see me at least five or six times while we were living at 1604 Brown Street.

Bob Morris came to see me at our house on Brown Street and explained about the legal aid. He explained that the

/s/ PAUL A. HODGES

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[fol. 447] legal aid lawyers would charge twenty-five per cent of whatever they settled my case for. He said that the legal aid lawyers were specialists in the field of railroad injury law. Morris told me about the legal aid and left it up to me to decide but did not pressure me like Harmon had been doing. Morris told me that he would bring a Mr. Crago from the Indianapolis Brotherhood of Railroad Trainmen to see me. About a week later Bob Morris came and brought Mr. Crago with him. Mr. Crago told us that he was General Chairman of the Brotherhood. I don't recall all that Crago said but generally he wanted me to hire

the legal aid lawyers in Chicago. He had some papers he wanted me to sign but I don't know what they were for. I didn't sign anything for him. Crago and Morris were at my house about thirty or forty minutes during which time Crago did most of the talking. During their visit a lawyer from Anderson, Indiana came to see me. Crago and Morris left shortly after this lawyer came. I don't remember his name. He have me his business card but I threw it away. He told me that he came to see me about a crossing accident in which a young woman named Bell was injured when her auto was in collision with a New York Central train. This had happened some months prior to my accident and I was riding in the cab of the locomotive and was a witness to her accident. I told him what I knew of the accident and then he questioned me about my own accident. He told me he would like to handle my case for me after asking if I had a lawyer. He left his card and asked us to phone him if we decided we wanted to hire a lawyer.

Another man came to see me about my case. A man who introduced himself as Fred Weber came to see me on the first day we were moving into 1604 Brown Street. He told us he was retired from the New York Central and that he had worked himself up through the Brotherhood of Rail-

/s/ PAUL A. HODGES

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[fol. 448] road Trainmen's union and had held many offices. I think he said he was once president of the local lodge. He indicated that he knew a lot about railroad accidents and told me my case would be worth somewhere around One Hundred Seventy-three Thousand Dollars. He wanted me to let the legal aid lawyers in Chicago handle my case. Weber stayed about thirty minutes and never came to see me again. I did not know Weber before he came and I did not ask anyone to have him see me.

I decided to settle my claim directly with the New York Central Claim Agent for Fifty Thousand Dollars. This was settled about the first week of September of 1959.

I have read the above statement consisting of this page and four other typed pages and it is true and correct to the best of my knowledge and belief.

/s/ PAUL A. HODGES

I have read the above statement and my knowledge of the above is the same as that of my husband. The above is true to the best of my knowledge.

/s/ Betty Hodges

I would like to add that the N.Y.C. did treat us fair and square. We have no complaints.

/s/ B. H.

Witnessed:

/s/ Fred J. Swihart

Jan. 12, 1960

[fol. 449] Notice to Take Depositions (omitted in printing).

To Brotherhood of Railroad Trainmen:

* * * * * * *

[fol. 450] [File endorsement omitted]

[fol. 451] [File endorsement omitted]

[fol. 452]

In the Court of Common Pleas of Philadelphia County

C. P. No. 1

June Term, 1961

No. 1006

Commonwealth of Virginia, ex rel., Virginia State Bar,

v.

Brotherhood of Railroad Trainmen, et al.

Deposition of Charles William Clark, Jr.

Deposition of Charles William Clark, Jr., taken, on behalf of the complainant, at the offices of Obermayer, Rebmann, Maxwell & Hippel, 1418 Packard Building, Philadelphia 2, Pennsylvania, on Thursday, June 29, 1961, commencing at 2:30 o'clock p.m. (EDST).

APPEARANCES:

Obermayer, Rebmann, Maxwell & Hippel, By: Robert W. Lees, Esq., Representing Complainant.

Duffy, Galbally, Anderson & O'Brien, By: Cornelius C. O'Brien, Jr., Esq., Representing Respondent for these proceedings only.

Esther E. Weber, Notary Public.

[fol. 453] Miss Esther E. Weber: Do you swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Charles William Clark, Jr.: I do under protest.

Mr. Lees: All right.

The Witness: Forced to come in here.

Mr. Lees: Thank you, Miss Weber.

Off the record.

(Discussion off the record.)

The Witness: Did you put that in there? I swear under protest.

Mr. O'Brien: Let me make a statement for the record: I am here representing Beecher Stallard, who I understand is the attorney of record in this action in the court of original jurisdiction, and I'm here as his representative for the Brotherhood of Railroad Trainmen.

Mr. Clark, I would like to address this statement to you: That I do not represent you and, therefore, you should address no questions to me regarding legality or illegality or the propriety or impropriety of these proceedings.

[fol. 454] I might say to you that you should be and have every right to be represented by an attorney, if you so choose.

The Witness: Yes, but then I got to stand the expense of it.

Mr. O'Brien: That is correct, but I am representing Mr. Beecher Stallard, as a representative for the Brotherhood of Railroad Trainmen, and, as I stated off the record, I know nothing about these proceedings other than what Mr. Lees has told me.

The Witness: You know as much about it as I do then.

Mr. O'Brien: All right, then, let's proceed and see what comes out.

Mr. Lees: All right.

CHARLES WILLIAM CLARK, JR., having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Lees:

Q. Will you state your full name and address?

A. Charles William Clark, Jr., 1622 North 59th Street, Philadelphia.

Q. And your employment?

[fol. 455] A. Trainman for the Pennsylvania Railroad.

Q. For how long have you been so employed?

A. Twenty years.

Q. Are you a member of a labor union?

A. I belong to the Brotherhood of Railroad Trainmen.

Q. What lodge would that be, sir?

A. 160.

Mr. Lees: Now, Mr. Clark, I am going to ask you to examine a statement and ask you if this is not your signature on this paper?

Before we go further, I guess I want to state for the record that I have been requested, Mr. O'Brien, by counsel in Richmond not to agree to waive any objections and specifically requested to ask you to note your objections at this time. Any objection that you want to make?

Off the record.

(Discussion off the record.)

Mr. Lees: Have you had a chance to examine this document?

Mr. O'Brien: I haven't.

Mr. Lees: Go ahead.

The Witness: Yes, part of that's right; part of it isn't.

[fol. 456] By Mr. Lees:

Q. That wasn't my question, sir. Is this—I draw your attention particularly to a statement, that's the writing "Charles William Clark, Jr.," and ask you if that is not your signature?

A. Let's see.

(Witness examines document.)

A. (Continued) I suppose so.

Q. Well, I ask you again to—

Do you remember being visited by Mr. Doermer and Mr. Sherman at the time that this statement was taken?

A. There was one man at the house once. I don't know who he was.

Q. There was one man who came to see you and typed it up?

A. He didn't type nothing up while I was there.

Q. Well, something typed up and brought back to you for signing?

A. I only remember him being there once.

Q. Are you able to look at the signature more closely and tell me definitely if it is or is not your signature?

A. That's my signature.

[fol. 457] Mr. Lees: I'd like to have this statement marked Plaintiff's Exhibit No. 1.

(Original copy of typewritten statement dated June 8, 1960, and handwritten statement bearing signature of Charles William Clark, Jr., dated 4-18-61, and handwritten notation bearing signature of John J. Doermer, and signature of J. A. Sherman, Witness, bearing date April 18, 1961, was marked Plaintiff's Exhibit No. 1 for Identification.)

The Witness: Part of what's in there is true and part of it isn't.

By Mr. Lees:

Q. Now, Mr. Clark, do you remember calling me on the telephone several hours ago and discussing this deposition with me?

A. I talked to somebody; I don't know who it was.

Q. Well, are you able to identify the voice of the person you spoke to as me?

A. No.

Q. But you did call somebody at this telephone number: LOcust 8-7911?

A. Yes, I did.

[fol. 458] Q. And do you remember in that telephone conversation saying—

Mr. O'Brien: That's objected to. I object to your testifying, and I object to the form of the question, and I object to the question itself as being improper for the reason that proper groundwork has not been laid as to the identity of the person with whom Mr. Clark was supposedly talking, and you, as an attorney, further, are guilty of improper conduct in attempting to testify in this proceeding.

And I want those objections stated for the record. If you want to testify, I have no objection to your being sworn.

Mr. Lees: I don't desire to testify. I desire Mr. Clark to testify as to the substance of his conversation when he called this office several hours ago.

By Mr. Lees:

Q. Will you tell us what your conversation was at that time?

A. I said I—

Mr. O'Brien: It's objected to.

The Witness: I object. I certainly do.

Mr. Lees: He's objected.

[fol. 459] The Witness: All right and I also object.

Mr. Lees: All right.

The Witness: I told you I said I didn't think you had any right dragging me out of my home down here to your office. It's Gestapo-like methods, and you'll never change my mind on that.

By Mr. Lees:

Q. Did you state you didn't know anything about the statement, which you have identified as having been signed by you?

Mr. O'Brien: That's objected to, also.

A. I don't remember that. I object, too.

By Mr. Lees:

Q. If you have objected to it, do you mind stating your reasons?

A. Because I don't want to be used as a patsy.

Q. You don't want to be used as a patsy in connection with what, Mr. Clark?

Mr. O'Brien: That's objected to.

By Mr. Lees:

Q. You don't want to be used as a patsy in what, Mr. Clark?

Mr. O'Brien: That's objected to, also. I'd like an offer of proof at this time.

[fol. 460] Mr. Lees: He's the one that said he didn't want to be used as a patsy, and I'm asking him for what.

The Witness: Anything that will further your needs or necessities or whatever you're trying to get.

By Mr. Lees:

Q. Mr. Clark, do you—

Let's return to the substance of the affidavit.

Mr. O'Brien: That's objected to. It's not an affidavit.

Mr. Lees: Strike the word affidavit. Statement.

Mr. O'Brien: Alleged statement.

By Mr. Lees:

Q. Will you state for the record what portion of this statement is true and what portion is not?

You had testified here a few minutes ago that part of it was true and part of it was not. Will you tell us now what portion is true and what portion isn't?

Mr. O'Brien: Would the reporter read back in the record [fol. 461] Mr. Clark's answer to a previous question regarding this statement.

It's one of the first questions that was asked after the exhibit was marked.

(Reporter read back as follows:

"The Witness: Part of what's in there is true and part of it isn't.")

By Mr. Lees:

Q. Now, you have heard the court reporter read your previous answer to you, Mr. Clark.

My question is now: Will you indicate from the statement which portion is true and which portion is not true, or you may tell us in your own words—

A. Tell you in my own words.

Q. —which is true and which is not true?

A. I visited Mr. Henslee at my own free will. I wasn't coerced in any manner.

Q. Yes. But I take it there's no doubt that in this case you were represented by Mr. Henslee?

A. He was of my choosing.

Q. He was your lawyer?

A. He was of my choosing.

Q. And he had represented you in an earlier case, is that right?

[fol. 462] A. That's right.

Q. How long ago was the earlier case, would you say?

A. I don't remember. It's a number of years.

Q. Well, would you say it was ten years, twenty years, eight years?

A. It might have been ten years. I don't remember.

Q. May have been ten years?

A. May have been; I don't remember.

Q. I understand these events are some time ago.

At that time was there a lawsuit started or settlement negotiated?

A. No lawsuit.

Q. On this occasion I gather from your statement that you sprained and injured the ligaments in your left ankle, is that true?

A. And tore the shin.

Q. And that was on June 6, 1959?

A. I think that was the date.

Q. Now, are you familiar with Bill Siess who works for the Brotherhood of Railroad Trainmen?

A. I know Bill.

Mr. O'Brien: It is objected to. The form of the question is objected to.

By Mr. Lees:

Q. And Bill Siess called you, is that correct, about this [fol. 463] accident?

A. I don't remember if he called me or I called him. It sticks in my mind I called him.

Q. But you had a conversation with him?

A. Yes.

Q. He also belongs to Local 160, is that correct?

A. Yes.

Q. And you have known Mr. Siess for a number of years, haven't you?

A. That's right.

Q. Bill asked you to come down to the BRT office, isn't that right?

Mr. O'Brien: That's objected to. You're leading. Ask him what happened.

Mr. Lees: I'm entitled to lead him.

Mr. O'Brien: Well, if you want to lead him, go ahead, but I am objecting to it.

Mr. Lees: You keep objecting to it for me.

By Mr. Lees:

Q. You said—I draw your attention to a portion of the statement in which you said: "Bill asked me to come down to the office of The Brotherhood of Railroad Trainmen in The Middle City Building at Philadelphia to talk over my [fol. 464] case." Is that what happened?

A. I don't remember that.

Q. You don't remember that.

Did you go to the Middle City Building and talk to him about the case?

A. I went down to pay my dues.

Q. Did you talk to Bill Siess in the office about the case?

A. I don't remember.

Q. You don't remember.

Now, I notice that this statement is dated June 8, 1960. Were you spoken to on one occasion about this case by an investigator, or were you spoken to on more than one occasion?

Mr. O'Brien: What investigator? Can you identify him?

Mr. Lees: Yes.

By Mr. Lees:

Q. I am asking you: Were you visited on one—or I'm asking you to explain, if you can, why this paper is dated June 8, 1960, and why in your writing is it dated 4-18-61?

A. I wouldn't know about that.

Q. My question to you is, sir: Were you visited on one [fol. 465] occasion by someone in connection with this statement or on two?

A. I can't answer that. I don't remember.

Q. Did somebody come to your house and discuss this episode with you in June of 1960 and thereafter revisit you in April of this year?

A. I don't remember anybody being there.

Q. Well, you remember somebody visiting you at least once when you put your signature on this paper, don't you?

A. This—this man there, or whatever his name is. Lees —Lees was there. I remember him being there.

Q. No, I'm Lees.

A. You were there.

Q. No, I've never been to your house.

A. Whoever it was identified himself as Lees.

Q. Nobody ever identified himself as Lees.

A. Somebody did.

Mr. O'Brien: You don't know. You're not under oath. You say they didn't, and you weren't there.

Mr. Lees: Well, that's true; I wasn't there.

Mr. O'Brien: You say you weren't there. He said a [fol. 466] man identified himself as Lees, and you said, no, he didn't.

Mr. Lees: Off the record.

(Discussion off the record.)

The Witness: The name Lees was used, and I assume that's the man that was there.

Mr. Lees: This is on the record.

By Mr. Lees:

Q. Do you see the name Lees on this anywhere?

Mr. O'Brien: I agree that it's not on there.

Mr. Lees: Well, I want the witness to state that.

A. No, I don't see it.

By Mr. Lees:

Q. Now, your testimony is that somebody who identified himself as Lees came to your house and did what—presented this statement to you to be signed?

A. That's the name I thought he used. I won't swear to this.

Q. You won't swear to it. So it may have been Sherman or it may have been Doermer. It could have been somebody else, couldn't it?

A. It could have been anybody; I don't remember.

[fol. 467] Q. This is in your writing, is it not, the language: "The above statement is true and I will swear to it if really necessary." Is that also in your writing?

A. Yes.

Q. That's in your writing.

A. I've changed my mind about that though.

Q. Your signature and the date is in your writing, also?

A. Yes.

Q. You remember the day you wrote those three things, do you not,—

A. I remember writing those.

Q. —on April 18th?

A. Yes, but I changed my mind about that last sentence there.

Q. You changed your mind, but you're under oath.

Do you remember Mr. Doermer writing this: "Charles William Clark, Jr. read the above statement and stated it is entirely true. He refused to sign this statement, however, indicating he did not wish to become involved in any kind of difficulty. John J. Doermer"?

A. I remember.

Q. Do you remember somebody writing this and signing [fol. 468] "John J. Doermer"?

A. I remember somebody writing that. I couldn't swear to that—

Q. But whoever it was signed it "John J. Doermer"?

A. —though.

Q. Did you see him write this?

A. No.

Q. Was that person somebody who identified himself as Lees?

A. I said I don't remember the name he gave me.

Q. You don't remember, all right.

On the right-hand side there is the name of the attesting witness, "J. A. Sherman," and the date, "April 18, 1961." Was that written in your presence?

A. Well, it—if it was, I didn't see him write it. I won't say it was or wasn't.

Q. So it's possible?

A. Possible or impossible, I don't know.

Q. Now, April 18, 1961, was a little more than two months ago. Do you remember whether or not this paper was brought to you typed up, or did somebody type it up in your presence?

A. Nobody typed anything in my presence.

[fol. 469] Q. Nobody typed anything in your presence?

A. No.

Q. Are you sure about that?

A. Positive.

Q. Absolutely sure?

A. Absolutely.

Q. Did somebody leave and type it and bring it back, or was it brought to you in this form?

A. That's the first I seen a typewritten form.

Q. On that occasion—the date you signed it?

A. Until—yes, the day I signed it.

Q. So that, when it was brought to you, it was brought to you in this form and read to you, and you executed it, is that correct?

A. The point is that there was no typewriting done in my house.

Q. No, you didn't hear my question, Mr. Clark. My question was: This was brought to you in written form and after you read it you wrote: "The above statement is true and I will swear to it if really necessary. Charles William Clark, Jr., 4-18-61"?

A. Yes.

Q. That's what happened?

A. Yes.

[fol. 470] Q. Now, having testified that this was brought to you in this form and read by you and executed, are you now able to tell us whether or not somebody had visited you before that time and discussed the substance of this statement?

A. Well, they must have because the original—the original wording was in longhand.

Q. I see. There was a previous statement that was taken in longhand, is that correct?

A. Yes.

Q. And was that taken by Mr. Doermer, if you remember, the same person that wrote this down here (indicating)?

A. I don't remember the name.

Q. Well, do you remember the face? Was it the same man that had visited you before and talked about the facts contained in this statement?

A. I'm not sure, but I don't think so.

Q. You don't think so. Could it have been?

A. It's possible.

Q. It's possible. And after Mr. Doermer or whoever it was that came and gave you the statement you had an opportunity to read it over, of course, before you signed it, didn't you?

A. Yes.

[fol. 471] Q. And you did read it over?

A. Yes.

Q. Now, on that occasion, whenever you gave this statement originally and it was written down in longhand, you advised the man who took it that you had known Siess and that "Bill asked me to come down to the office of The Brotherhood of Railroad Trainmen in The Middle City Building at Philadelphia to talk over my case." Did you say that on that occasion?

A. I may have, but I like to change that. I don't remember if I asked him or if he asked me for a conference.

Q. I see.

A. It seems to me that I asked him for a conference.

Q. Seems to you that you asked for a conference. Very well.

Then the statement goes: "He told me I should let the Brotherhood handle my claim for me; that the union's lawyer was E. B. Henslee, and that Henslee would get a fair settlement for me." Did you tell him that?

A. I told Bill I wanted Henslee to handle that.

Q. No. Did you tell the man who took the statement originally that statement?

[fol. 472] A. Possibly.

Q. And, of course, you read it over before you signed it.

Did you tell the investigator that "Bill Siess also told me on the telephone that they would have my accident investigated for me, and that if I was hard up for money, he would see to it that I got a couple of hundred dollars." Did you tell him that?

A. I don't remember.

Q. You don't remember that?

A. May have, but I'm not sure.

Q. May have?

A. May have, but I'm not sure.

Q. It is possible that you did tell him that?

A. It's possible, but I wouldn't say yes.

Q. But, on the other hand, you wouldn't say no, would you?

A. I don't know.

Mr. Lees: Now, Mr. Clark, I caution you that you're under oath.

Mr. O'Brien: That's not necessary; he knows that.

The Witness: I understand.

Mr. Lees: I want you to do your best to remember these [fol. 473] things.

The Witness: I'm not a criminal. I've never been arrested for anything except a minor traffic violation.

By Mr. Lees:

Q. Without respect to what you told the investigator who then took this statement, did Mr. Siess tell you that he would have your accident investigated for you and that he would see that you got a couple hundred dollars if you were hard up?

Mr. O'Brien: That's objected to.

A. I said I don't remember,—

By Mr. Lees:

Q. You don't remember?

A. —whether I said that or not.

Q. Now, I ask you if you had a telephone conversation with Mr. Siess about this subject?

Mr. O'Brien: That's objected to.

The Witness: Do I have to answer that?

Mr. O'Brien: Yes, over my objection.

I cautioned you in the beginning that I am not your attorney.

The Witness: I realize that. I'm just asking you.

[fol. 474] Would you ask that question again, please?

(Last question was read by the reporter as follows:

"Q. Now, I ask you if you had a telephone conversation with Mr. Siess about this subject?").

The Witness: I talked to Bill Siess about the case, yes, about my being hurt.

By Mr. Lees:

Q. Did he call you on the telephone and advise you that he would have the accident investigated for you?

Mr. O'Brien: That's objected to.

A. I called him I'm sure.

Q. You called him?

A. It was long distance call to his home.

Q. Are you quite certain that that's the way it was?

A. I made a long distance call to his home.

Q. Are you able to give us any explanation, Mr. Clark, why you told the investigator that he called you when you now testify under oath that you called him?

Mr. O'Brien: That's objected to.

A. Who knows what you say in a time like that, jeez.

Q. Is that your explanation, Mr. Clark?

[fol. 475] A. The man who visited me is a smooth talker. He's liable to get me to say most anything.

Q. Is your explanation that he put these words in your mouth, persuaded you to say that?

A. No, I don't say that.

Q. What do you say? What is your explanation?

A. I say at the time I wasn't responsible for what I was saying.

Q. What do you mean, Mr. Clark, that you weren't responsible for anything?

A. Well, I wasn't myself. I was mad for one thing.

Q. You were mad?

A. Yes, being bothered by somebody I didn't know about something that was none of their business.

Q. And so, because you were mad, you told him something that wasn't true, is that correct?

A. I don't remember.

Mr. O'Brien: That's objected to. You're characterizing the witness' testimony.

Mr. Lees: Mr. Clark is characterizing, not I.

By Mr. Lees:

Q. Are the facts contained in this statement true, Mr. Clark, or is the statement you're giving here today true?

[fol. 476] Mr. O'Brien: That's objected to. The facts in the statement can be true and the facts that he's testified to today can be true.

Mr. Lees: Let him explain.

Mr. O'Brien: He's entitled to explain that if he can, and he's explaining that, I think.

The Witness: Not everything on that paper is true.

By Mr. Lees:

Q. So on this occasion you were lying and signed it?

Mr. O'Brien: Objected to. You're intimidating the witness.

Mr. Lees: I am not intimidating the witness. He said it wasn't true, so it must be a lie.

The Witness: I told you I wasn't myself. I was liable to say anything at that time.

By Mr. Lees:

Q. So that it is true that you did have a conversation with Siess about the Brotherhood handling your claim. The only difference between the statement that you have given here in Exhibit 1 and your testimony today is that the telephone call might have been made by you rather than by Siess, is that correct?

A. I called.

[fol. 477] Q. Where is his home?

A. It's one of the suburban towns.

Q. Do you know his address?

A. No.

Q. Do you know what his telephone number is?

A. No.

Q. Had you ever called him before?

A. No.

Q. Have you ever called him since?

A. Not since.

Q. That's the only time you called him.

So you said in your statement that Siess said that he would see to it that you got a couple hundred dollars? Is that the way it happened?

A. He asked me if I needed money. I'd been off—injured for some time.

Q. So he said he would see you got a couple hundred dollars?

A. I took it to mean that on—it would be a personal loan between he and I, and I told him I didn't need any money.

Q. Now, you said that "He didn't say where the money would come from, but I gathered that Henslee would advance it to me."

[fol. 478] A. Well,—

Q. Do you remember so testifying in this statement?

A. Yes, could have been either way. But when I thought of it later, I thought that Bill—Mr. Siess was hinting that he would loan me of his funds.

Q. You thought that he was hinting, but he didn't say that he would loan it to you, did he?

A. No, he didn't say that.

Q. And he didn't say that Henslee would loan it to you, did he?

A. No.

Q. But you gathered on April 18, when you gave this statement, it would be a loan from Henslee; but today you've known it would be from Siess?

A. I thought—I've known Bill for a—oh, a number of years. I thought—

Q. Has anything happened between April 18th and June 29th to make you change your opinion as to the source of this money, Mr. Clark?

Mr. O'Brien: That's objected to.

A. What do you mean?

By Mr. Lees:

Q. In your relations with Siess has anything happened? Has he given you an indication in loaning you money [fol. 479] that would make you think it would be coming from him?

A. Never spoke to him about it directly.

Q. Never spoke to Siess about this directly?

A. Not the actual loan of money from him.

Q. I see. Now, you testified in this statement—

Mr. O'Brien: He didn't testify in that statement.
Mr. Lees: He stated.
The Witness: That's not sworn to.
Mr. O'Brien: I prefer: it is stated in the statement.

By Mr. Lees:

Q. I will—in an effort to make Mr. O'Brien happy—say that it is stated or it appears in this statement—

A. I wish you'd do that, too.

Q. —that "Bill indicated to me that if I did not hire Henslee, I wouldn't get a fair deal from the company, although I don't remember the exact words he used that gave me that impression."

Do you remember saying that in connection with that statement?

A. He never actually said that the company would take me over without the Brotherhood's help. He never actually [fol. 480] said that.

Q. But he did suggest it to you?

Mr. O'Brien: That's objected to.

A. I wouldn't say that he did.

Q. Would you say that he did not?

Mr. O'Brien: That's also objected to.

A. I wouldn't say that he did not.

Q. It's possible, then, that he was suggesting without Henslee's help you wouldn't get a fair deal from the company?

Mr. O'Brien: That's objected to.

A. Well, who knows? I don't know what was in his mind.

Q. Well, I'm asking you what was it in your impression?

Mr. O'Brien: This isn't a deposition of impressions; it's a deposition of facts.

Mr. Lees: He's entitled to have an impression.

The Witness: I have a right to change that.

By Mr. Lees:

Q. You have a right to an impression on—

A. I don't remember that I had any definite impression.

[fol. 481] Q. Well, you do remember signing this statement in which you said you had an impression, don't you?

A. All right.

Q. And you now remember that your impression has changed?

A. I said I don't have any definite impression.

Q. Do you have any indefinite impression?

A. No.

Mr. O'Brien: That's objected to.

By Mr. Lees:

Q. Your answer is no?

A. No.

Q. Well, is Siess a smooth talker?

Mr. O'Brien: That's objected to.

A. He's a man I've known over the years.

By Mr. Lees:

Q. You said on April the 18th that he was a smooth talker. Is he or is he not a good talker?

A. He's a good linguist. He's a man that knows—can talk to anybody.

Q. All right, and you said that "he gave me to understand that with Henslee as my lawyer, my job and seniority rights would be protected since Henslee was the union's lawyer." Do you remember so stating?

[fol. 482] A. It's possible.

Q. Well, it's—perhaps you misunderstood me. There's no doubt that you did say that in this statement of April 18th, is there?

A. It's on there I said it.

Q. It's on there you said it?

A. Course, that may be misinterpreted, too.

Q. Did he give you to understand that your job and seniority rights would be protected if Henslee represented you?

Mr. O'Brien: That's objected to.

A. Not in so many words.

By Mr. Lees:

Q. Not in so many words, but he did give you that understanding though?

Mr. O'Brien: That's also objected to.

A. I don't remember.

By Mr. Lees:

Q. Well, now, Mr. Clark, you said on April 18th that he did give me to understand that?

A. I told you I wasn't up to par when I made that statement.

Q. Well, it's possible that he gave you to understand that?

[fol. 483] Mr. O'Brien: It's also impossible, possible or impossible.

The Witness: Possible, but I don't remember.

Mr. Lees: Will the counsel for the BRT make objections to the questions without trying to suggest answers to the witness.

Mr. O'Brien: I'm not.

Mr. Lees: Well, you're commenting for the record and that comment is unnecessary. The record is clear without the unnecessary statement that it's possible or impossible.

Mr. O'Brien: Thank you for the instructions on procedure in this deposition.

Mr. Lees: I would never attempt to give you any instructions, Mr. O'Brien.

So that our friends in Virginia will not misunderstand, I will state for the record that you're one of the best qualified young plaintiff's lawyers in town.

Mr. O'Brien: Thank you very much.

Mr. Lees: Off the record.

(Discussion off the record.)

Mr. Lees: All right, back to it.

[fol. 484] By Mr. Lees:

Q. You remember in your statement saying that you did meet Henslee and Bill Siess in the union office?

A. In the union office?

Q. That's what you stated here in Plaintiff's Exhibit No. 1, Mr. Clark. I will read it to you. "I met Siess at the union office several days later as requested, and when I arrived at the office, Attorney Edward B. Henslee of Chicago, Illinois, and Bill Siess were both there waiting for me." Do you remember so stating?

A. Now, I know I was off the beam, because I didn't talk to Henslee in the Brotherhood office.

Q. Where did you talk to Henslee?

A. In the—

Q. In the Bellevue Stratford?

A. I went over there.

Q. You went over there to see him for a couple days?

A. Yes.

Q. Did you go there by yourself?

A. I went there alone, yes. I asked what his room number was and I went.

Q. After Mr. Siess had told you to come to town and the day you should go over there to see him?

A. I asked when Mr. Henslee would be in town.

[fol. 485] Q. And Siess told you?

A. That's right.

Q. Was anybody else there besides Henslee?

A. Bob Moss.

Q. Who's Bob Moss? Is he another lawyer?

A. Not to my knowledge.

Q. Well, is he is a member of Local 160?

A. As far as I know. I don't know.

Q. He was a union member?

I'm asking you, really, was he somebody that was known to you? He wasn't a stranger?

A. No, no. Oh, yes, I know Bob Moss.

Q. Henslee and Bob Moss were there, and was Siess there?

A. Yes.

Q. And you had a conversation with Henslee on that occasion, is that right?

A. That's right.

Q. And this was how long after your accident, would you say? Was it three months, or six months, or four months?

A. Gee, I don't remember.

Q. But it was some time following your accident?

A. Yes.

[fol. 486] Q. At the time you went down to see him were you able to get around?

A. Yes.

Q. Did you have to use a cane? Was your leg in a cast?

A. No, I was walking then without the artificial help.

Q. And how long a recuperation period did you have, approximately, after your accident?

A. I was off a total of five months.

Q. Five months. And did you see Mr. Henslee while you were still off or was it following your return to work?

A. It was afterwards.

Q. So that it would be sometime after—in November, sometime after November 6, which is the date five months following your accident?

A. Well, I was back to work at the time.

Q. You were back to work?

A. Yes.

Q. So, can I suggest, was it in the end of 1959 or was it in 1960?

A. I don't remember the date.

Q. Was it before or after Christmas, do you remember?

A. I'm not sure. I'm not going to give you a d te unless [fol. 487] I'm sure and I'm not sure.

Q. That's all right.

Had you been back to work very long when you went to see Mr. Henslee?

A. Couldn't have been too long.

Q. Couldn't have been too long?

A. No.

Q. Matter of several weeks, could you say that?

A. I would believe that would be right.

Q. That would be fair, all right.

Now, on that occasion when you saw Mr. Henslee, did you describe the nature of your accident to him?

A. I did.

Q. And did he have a secretary take down your testimony, or did he write it down himself?

When I say testimony, I mean—

A. Statement.

Q. —your version of the facts.

A. I don't remember a secretary being there.

Q. Did he make notes of the statement?

A. I'm not even sure of that.

Q. Yes. When you met Henslee, had you ever met Mr. Henslee before?

[fol. 488] A. Yes.

Q. Had you had dealings—

Was he a young man or an old man?

A. He was a young man.

Q. Had you been represented by him before or by his father?

A. Once by his father. I remember a long time ago, and I believe once by the son, but I'm not sure. I think once by the son.

Q. I see. Did Mr. Henslee identify himself as the lawyer for the Brotherhood?

A. Yes.

Q. And, as a matter of fact, you already knew that he was the lawyer from the Brotherhood with the conversations with Mr. Siess?

A. Well, I knew it without Siess' conversation.

Q. You knew that he was the lawyer?

A. Yes.

Q. And have you seen Mr. Henslee on any other occasion following that meeting in the Bellevue Stratford?

A. Just once, I think.

Q. You saw him once. Where was that?

A. Same place.

Q. You saw him on one of his later visits to Philadel-

[fol. 489] phia?

A. Yes.

Q. And were you on the occasion of that visit requested by Mr. Siess to go down and visit him?

A. I don't think so. I think I asked to see the man if I remember rightly. That I asked when he'd be back in to town.

Q. And did you, when you first saw Mr. Henslee, sign a form of agreement retaining him to represent you in the case against the railroad?

A. Yes.

Q. And did he thereafter represent you and settle your case?

A. That's right.

Q. And how much money did you receive?

A. Total of five thousand dollars.

Q. Now, in connection with this subpoena that has been issued, do you remember what efforts were made to subpoena you last week end?

Mr. O'Brien: That's objected to. It's completely immaterial.

Mr. Lees: O.K., object.

Mr. O'Brien: Do you know what efforts were made to subpoena you?

[fol. 490] Mr. Lees: I'm asking the questions. You can ask him later.

Mr. O'Brien: I don't know how he would know what efforts were made.

The Witness: Rephrase that a little bit.

By Mr. Lees:

Q. Were you home last week end?

Mr. O'Brien: That's objected to.

A. I'm in the house by myself. I'm in and out, and I'm not in the house very much and—I mean, after eleven o'clock. My wife isn't there. She's visiting—helping my daughter out in New Jersey. She's been over here for several months and for that reason I'm not in the house much.

Q. Mr. Clark, you testified—when the oath was administered, you said you were here under protest. What did you mean by that?

A. Because I don't like the idea of being drug away from my work to further somebody else's benefit.

Q. Were you afraid to appear in this place?

Mr. O'Brien: Objected to.

A. No. Absolutely not. I have—I got nothing to hide.

Q. Do you have any reason to believe anyone will take [fol. 491] reprisals for your testifying?

Mr. O'Brien: That's objected to.

A. No, I don't.

Q. You have no reason—

A. No.

Mr. O'Brien: Has anybody threatened to take reprisals if you testified?

The Witness: No.

Mr. O'Brien: Any threatened reprisals?

The Witness: No.

Mr. Lees: You examine on cross-examination.

Mr. O'Brien: It's just a lot of gopher dust; particularly, the man goes to subpoena him and the person to be subpoenaed is not home.

Mr. Lees: Off the record.

(Discussion off the record.)

By Mr. Lees:

Q. As a matter of fact, you made an effort to avoid subpoena in this case?

Mr. O'Brien: That's objected to.

A. Well, subpoena's something new to me. The man comes to where I live—I don't know what it's all about.

[fol. 492] Q. You made an effort to avoid coming in here, didn't you?

Mr. O'Brien: That's objected to.

A. I have every right to, because I'm being misused.

Q. Why do you think you're being misused?

A. Because you're dragging me in here and I object.

Q. And you objected yesterday when you were sought to be subpoenaed by someone, didn't you?

Mr. O'Brien: That's objected to.

A. Don't know what's going on. Some character I never seen in my life trying to give me something.

Q. As a matter of fact, he tried to stuff it in your pocket and you wouldn't take it, isn't that so?

Mr. O'Brien: That's objected to.

A. I don't know. I had my back turned to—

Q. As a matter of fact, you weren't handed the subpoena then, were you?

A. No.

Q. Weren't you wondering what it was or didn't you—

A. He's got a subpoena. How do I know it's not something injurious to my health.

Q. And, therefore, you wouldn't stop to read it, is that correct?

Mr. O'Brien: Objected to.

[fol. 493] A. I'm not handling nothing I don't know what it is.

Q. And, as a matter of fact, you were fearful of having to come to this proceeding to testify?

Mr. O'Brien: That's objected to.

A. No, not necessarily.

Q. Not necessarily?

A. That wasn't really the reason.

Q. You said you really didn't want to testify in this case, is that right?

Mr. O'Brien: That's objected to.

A. I said I objected to being—coming down here and being drug out of my own home.

Q. And that was in a conversation with me, and this is what you said to me, isn't it?

A. I didn't get that, please.

Q. Was this statement made in a conversation with me?

Mr. O'Brien: That's objected to.

A. It could have been.

Q. It could have been. In fact, this was a conversation that took place about twelve o'clock or half past twelve today, isn't that right?

A. I said I objected being drug out of my own home to further someone else's needs.

Q. And that was during twelve o'clock or half past twelve [fol. 494] today?

A. Thereabouts.

Q. All right. No dispute that you had a telephone conversation with me today and complained about testifying in this case?

A. No, I complained about that.

Mr. O'Brien: I have many witnesses who complain about that.

The Witness: I don't know what it's all about. I never had any papers thrown at me. I have nothing to do with law. I don't want to get tangled up with it. The further away I am the better I feel.

By Mr. Lees:

Q. Did somebody call you to explain these depositions and explain the nature of the proceedings?

Mr. O'Brien: Would you identify the person?

Mr. Lees: This would have been a telephone call on Tuesday morning. Mr. Sherman.

The Witness: Somebody called the house.

Mr. Lees: Somebody called the house on Tuesday morning and identified himself as Mr. Sherman.

Mr. O'Brien: Is that Mr. Sherman the same person whose name is on Exhibit 1?

[fol. 495] Mr. Lees: Yes.

By Mr. Lees:

Q. And he had a brief telephone conversation and asked for you to see him, is that right?

A. Don't remember what his conversation was, except that I didn't want to talk anything more about the case.

Q. And he said that he wanted to visit with you and explain the nature of the proceedings and let you know why you were being subpoenaed, didn't he?

A. Words to that effect.

Q. And at that time you told him, as you have stated here now, you didn't want to talk about it?

A. That's right. I was ready to leave the house.

Q. So that there was an opportunity made to explain the whole proceedings to you, wasn't there?

A. Well, I suppose he'd call it an opportunity. I certainly didn't call it no opportunity.

Q. So there's no doubt that we've made an effort to try to put your mind at ease about this thing, is there?

A. You couldn't put my mind at ease. You're dragging me in on something that I got no connection with.

Q. But Mr. Sherman was going to explain your connection, wasn't he, on Tuesday morning?

A. I told Mr. Sherman that I didn't have time to talk [fol. 496] to anybody. I was in the act of leaving the house when the phone rang. I had somewhere to go.

Q. And did you offer to make an appointment with Mr. Sherman?

A. No.

Q. You didn't want to?

A. I didn't offer to.

Q. So then, Wednesday, June 28th, would you state for the record the circumstances of the subpoena, please.

Mr. O'Brien: What do you mean by the circumstances of the subpoena?

The Witness: No papers.

Mr. O'Brien: He was subpoenaed and he's here pursuant to the subpoena in all probability.

By Mr. Lees:

Q. There were none? But somebody tried to hand you papers, isn't that right?

A. Yes.

Q. Somebody tried to give them to you and you refused, didn't you?

A. That's right.

Q. Where was this, in your home or—

A. No, it was in the Pennsylvania Railroad Station.

Q. Above 30th Street?

[fol. 497] A. Above 30th Street.

Q. What time?

A. This was quarter after three or—

Q. Half past three?

A. About quarter after three.

Mr. O'Brien: Could you identify the person who served the subpoena?

Mr. Lees: John E. Gillmor. It's not notarized yet.

Mr. O'Brien: Who is Mr. Gillmor, Mr. Lees?

Mr. Lees: He's a law clerk employed in this office.

The Witness: I don't know who he is. I never heard of him.

Mr. Lees: He's a third year law student at the University of Pennsylvania.

The Witness: Or subpoena server. He might have been for all I know. He didn't identify himself.

Mr. O'Brien: Was he on railroad property when he served you?

The Witness: Certainly was. He was interfering with my work.

[fol. 498] By Mr. Lees:

Q. He was interfering with your work. How was he interfering?

A. He was interfering with my duties. I was following out the orders of the yardmaster on a train movement.

Q. And he came up to you and tried to hand it to you, and you wouldn't take it?

A. No, no, this—

Mr. O'Brien: Of course, all testimony as to the service of the subpoena is objected to.

Mr. Lees: I understand.

The Witness: He came into the office of the assistant trainmaster—told the assistant yardmaster. When I asked for permission to leave the yard with my train, the assistant yardmaster—assistant trainmaster wanted to see me in his office.

By Mr. Lees:

Q. So that you—

A. It wasn't the assistant trainmaster; it was this character, whoever he is.

Q. So you were actually subpoenaed in the railroad office?

A. In the railroad office.

[fol. 499] Mr. O'Brien: Sounds like the railroad cooperated with the subpoena server.

The Witness: I don't know. They may not have known who he was.

By Mr. Lees:

Q. So you were called from the yard—

A. I taken—I was taken away from my train movement.

Q. —and directed to go to some other place to receive the subpoena, is that right?

A. If I had known what that was for, I wouldn't have even went over there. I was carrying out my—the orders of the assistant trainmaster—the yardmaster at the time I got this conversation over the phone.

Q. Now, returning to your statement, Mr. Clark, we have discussed it and you have pointed out certain variations between the events as they actually occurred and the events as you set them forth in this statement, haven't you?

A. That's right.

Q. Is it your testimony here today that except for those points the events as they are recited here in Exhibit No. 1 are true and correct?

A. Well, I want it understood before I answer that that I wasn't coerced by Henslee and anyone to do with—

[fol. 500] Q. Just answer my question.

Mr. O'Brien: He can make any statement he wants to make.

Mr. Lees: He can make any statement he wants after he answers my question. My question was—

Would you please read that back?

(The question was read by the reporter as follows:

"Q. Is it your testimony here today that except for those points the events as they are recited here in Exhibit No. 1 are true and correct?")

By Mr. Lees:

Q. All right, now answer the question and, then, make your statement.

A. I'll have to look at that.

(Witness examines Plaintiff's Exhibit No. 1.)

A. (Continuing) I don't remember him saying that I would get rooked. I said it here, but I don't remember him saying that.

Q. It's possible that he might have said it though?

A. It's possible that he did not say it.

Q. But at any rate when you read and signed that paper, you didn't seek to change it anyway, did you?

[fol. 501] A. I told you I was in no condition to realize what I was doing.

Q. Now, we're turning from my question.

Now, apart from the statement that we've already discussed, the statement is true and correct?

A. Except for the part about the company rooking me.

Mr. O'Brien: How about the part whether Siess called you or you—

The Witness: No, I called Siess.

Mr. Lees: I object.

Mr. O'Brien: He testified earlier to that, and what you're trying to do is restrict his testimony by having one final question.

Mr. Lees: I'm trying to bring out the areas—

Mr. O'Brien: They're covered. Are you summing—

Mr. Lees: I don't think they are.

Mr. O'Brien: Are you summing up now?

Mr. Lees: I am not, Mr. O'Brien, because there's no jury.

Mr. O'Brien: There's no reason for summing up, because his testimony speaks for itself.

Mr. Lees: His testimony certainly speaks for itself.

[fol. 502] By Mr. Lees:

Q. You say that apart from those portions of the statement, the part of the statement that says that Siess called you and apart from the part of the testimony that says that you would be rooked if your case wasn't handled right—

Mr. O'Brien: That's right. Any case that's not handled right the client gets rooked.

Mr. Lees: He says he didn't say that.

Mr. O'Brien: I mean, if he did say it, I would agree with him.

Mr. Lees: I'm only asking him for his view.

The Witness: I don't remember the word rooked.

By Mr. Lees:

Q. Apart from the statement where you said that Mr. Siess called you—

A. I called him.

Q. You called him. But apart from that, this statement is correct?

A. And I asked to see Mr. Henslee. They didn't say come down. They didn't say that. I asked to see Henslee.

[fol. 503] Q. I understand.

A. That was my idea.

Q. Although you did say: "He told me I should let the Brotherhood handle my claim for me; that the union's lawyer was E. B. Henslee, and that Henslee would get a fair settlement for me." You did say that, didn't you?

A. I consider Henslee a good lawyer; and if there was a case that he handled, I think he'd handle it right.

Q. But you did say that? You did testify that "He told me I should let the Brotherhood handle my claim for me; that the . . . "

There is no doubt you said that as it is written down?

A. I wanted the Brotherhood to handle my case regardless of what Bill Siess said.

Q. But that's what you told the investigator?

A. You can strike that out.

Mr. O'Brien: You're explaining your statement, is that right?

The Witness: That's right.

By Mr. Lees:

Q. Are you able to explain any more clearly why you said—you told the man who took this statement that it [fol. 504] was Siess that told me that I should let the Brotherhood handle my claim, when today you say that it was your idea that he handle the case?

A. I don't know why I said that.

Q. You don't know why you said that?

A. No.

Q. But nobody coerced you into signing this statement, did they?

A. No. But, only thing, I was glad to get rid of the guy, and I was liable to sign anything just to get rid of him.

(Short recess taken, during which Reporter Gayla Grove was replaced by Reporter Betty Felix.)

By Mr. Lees:

Q. Are you charging the Virginia lawyers with coercing you?

A. No, I'm not.

Q. And you don't care to give any information as to Virginia lawyers?

A. No, I don't know anything about Virginia lawyers.

Q. Has anybody coerced you in this case?

A. No.

Q. You haven't been coerced at all?

[fol. 505] A. No.

Q. You're under oath. There's no doubt about that.

A. That's right.

Mr. Lees: Cross-examination?

Cross examination.

By Mr. O'Brien:

Q. I didn't talk to you about this case?

A. I never seen you before.

Q. And this is the first time I've asked any questions of you regarding the purpose of your being subpoenaed to testify here today?

A. I never had any conversation with this man before in this room.

Mr. Lees: When you say this man, you mean Mr. O'Brien?

The Witness: That's right: Mr. O'Brien.

By Mr. O'Brien:

Q. Did you ever notify William Parker Kennedy, the President of the Brotherhood, of any of the matters that you testified to here today?

A. (Nodding negatively.)

Q. You'll have to indicate yes or no. I notice you're shaking your head in the negative but—

A. William Parker Kennedy?

[fol. 506] Q. Yes. The President of the Brotherhood of Railroad Trainmen. Did you ever tell him of any of the facts to which you testified here today or any of the facts as set forth in Plaintiff's Exhibit No. 1?

A. I don't remember ever having any conversation with this man Kennedy, either written or spoken.

Q. I see. Now, prior to your injury in June of 1959, you had suffered injuries on the railroad before, had you not?

A. Yes.

Q. Did you retain counsel to represent you—

A. Yes.

Q. —in those injuries?

A. Yes.

Q. Whom did you retain at that time?

A. Same.

Q. E. B. Henslee?

A. Same firm.

Q. And that would be the firm of Henslee, Monek & Murray?

A. I don't know what the other two names are. I remember Henslee.

Q. There was Edward B. Henslee, Sr. You knew the elder Mr. Henslee, who is now deceased?

[fol. 507] A. Yes, I knew him.

Q. And I take it that the Henslee you dealt with in this action was Edward B. Henslee, Jr., his son?

A. That's the way he was introduced to me, yes.

Q. Do you know that Mr. Edward B. Henslee, Jr., and Mr. Edward B. Henslee, Sr., during Mr. Henslee, Sr.'s lifetime, were law partners? Were you aware of that?

A. That's my assumption.

Q. Now, you stated or it is stated in Plaintiff's Exhibit No. 1 that Bill Siess called you regarding the retention of Mr. Henslee as your counsel in this case; is that correct? That is in the statement.

A. That was in the statement.

Q. And you've testified under direct examination by Mr. Lees that it is your best recollection that you called Mr. Siess regarding this accident?

A. That's right. I got his phone number through the Brotherhood office.

Q. To whom at the Brotherhood office did you talk?

A. Farrell.

Q. And what was the purpose of your call to Mr. Farrell?

A. I wanted to talk to Bill Siess and through him I got Siess' number.

[fol. 508] Q. After you got hold of Mr. Siess, what conversation did you have with Mr. Siess? To the best of your recollection, would you tell us what you said to Mr. Siess and what he said to you.

A. Well, to the best of my recollection, I wanted—I told Bill that I wanted to talk to Mr. Henslee. I wanted also to know when he would be in town.

Q. What did Mr. Siess say in response to that inquiry?

A. He told me when he would be in town.

Q. Did you ask Mr. Siess to make an appointment with Mr. Henslee for you? Do you recall whether or not that happened?

A. I'm not sure of that.

Q. All right. Could I suggest this to you: That, after Mr. Siess found out when Mr. Henslee would be in town, Bill called you and told you when he would be in town and arrangements were then made for you to see Mr. Henslee.

A. I found out one way or the other, but I'm not sure how I did find out.

Q. The request to see Mr. Henslee was initiated by you?

A. That's right.

Q. And it was not suggested to you by Mr. Siess that [fol. 509] you see Mr. Henslee?

A. No. Because I had met Mr. Henslee before, and he handled the case for me before, and I wanted to talk to him.

Q. You wanted to talk to him about your case?

A. That's right.

Q. After you talked to Mr. Henslee about your case, you signed an agreement with him to have him represent you; is that correct?

A. That's right.

Q. Was that of your own free will and consent?

A. Oh, yes.

Q. Was it due in any part at all to any prodding or suggestion by Mr. Siess?

A. No. That's the way I wanted it.

Q. Were you satisfied with the way that Mr. Henslee handled your case?

A. Yes.

Q. During the course of your conversation with Mr. Henslee, I believe it is stated in this statement marked Plaintiff's Exhibit 1 that Mr. Henslee said to you that you had a very good case but that, if it were not handled right, you would get rooked. Now you say that you did not use that language.

[fol. 510] A. I don't remember using that word because it's not normally in my vocabulary.

Q. Therefore, I suggest to you that that is probably the language of the gentleman who took this statement.

A. It's possible.

Q. Now, Mr. John J. Doermer, who has a notation on Plaintiff's Exhibit No. 1, and Mr. J. A. Sherman, whose signature appears as a witness, came to see you; correct?

A. Yes, but singly.

Q. Did they ever come together?

A. I don't think so.

Q. When they came to see you, did they identify themselves?

A. Yes, I guess they did.

Q. Do you recall how they identified themselves?

A. One of them showed me a card, but I don't know which one.

Q. All right. Do you recall what the nature of the card was? What was on it?

A. No, I don't. At the time, it satisfied me as to his identity, but I don't remember what was on it.

Q. May I suggest any of the following: Did they say anything about the Virginia Bar Association?

[fol. 511] A. I don't remember that.

Q. Did he identify himself as an investigator or an agent for the Association of American Railroads?

A. Yes.

Q. Do you recall that?

A. Yes. I don't know which one it was.

Q. You don't recall whether it was the gentleman who came to see you first?

A. No, I don't remember which one it was, but one did say he represented the Association of American Railroads.

Q. This statement is dated at the top: June 8, 1960. Do you recall which gentleman came to see you first? Mr. Doermer or Mr. Sherman?

A. Well, the one—let's see. The one that called first is the one that identified himself with the Association of American Railroads.

Q. All right. Now, you don't recall whether or not that was the gentleman who witnessed it? Would that be Mr. Doermer who came first?

Let me try to refresh your recollection. The statement is dated June 8, 1960, but the date opposite what appears to be your signature and the date—

Mr. Lees: Of course I object to that. He said it was his [fol. 512] signature, so there's no doubt about it.

By Mr. O'Brien:

Q. —and the date it was witnessed, both are stated as April 18, 1961. So two dates are involved here: June 8, 1960, and April 18, 1961.

A. Must have been a mistake there in the dates, because they weren't that far apart.

Q. And you stated that you did not meet Mr. Henslee at the Lodge office, but at the Bellevue-Stratford; is that correct?

A. I don't recall seeing Mr. Henslee at the BRT at all. I know I went over to the Bellevue-Stratford and seen him.

Q. You mentioned John Farrell earlier. Can you identify John Farrell?

A. Yes. He's the Lodge Secretary.

Q. And his office is at the Middle City Building?

A. That's right.

Q. And he's the gentleman who gave you Mr. Siess' phone number?

A. That's right.

Q. As a result of that, you placed this call to Mr. Siess, inquiring as to when Mr. Henslee would be in town, that you [fol. 513] you wanted to see Mr. Henslee?

A. Well, the way that come about, I got the phone number from Farrell of Mr. Siess. I called Mr. Siess' house, and he wasn't home. I left word with his wife that he was to call me; I wanted to talk to him.

Q. Then there is no inconsistency in your statement that Mr. Siess did call you. He called you in response to a call that you made to his house.

A. At my request.

Q. He wasn't home. He called you back, and that's how you made this appointment.

Mr. Lees: Will you move so I can see the witness?

The Witness: His wife answered the phone or some woman I took to be his wife, and I asked that John call me when he got home.

By Mr. O'Brien:

Q. So Mr. Siess did give you a call, but it was in answer to your call that you had placed earlier.

A. At my request.

Mr. O'Brien: Yes. That's all I have.

Redirect examination.

By Mr. Lees:

Q. Mr. Clark, what is Mr. Siess' position in the Local?

[fol. 514] A. Technically I don't know, to be honest with you.

Q. Is he an officer of the Local?

A. My impression is that—

Q. I'm asking you first do you know whether or not he's an officer member of the Committee?

A. I don't know that for sure.

Q. You don't know for sure. Tell us what you think. What he might be.

Mr. O'Brien: Objected to.

By Mr. Lees:

Q. Tell us what you were going to say originally.

A. I think he works for Mr. Henslee.

Q. You think he works for Mr. Henslee?

A. Yes.

Q. You mean looking for clients?

Mr. O'Brien: That's objected to.

By Mr. Lees:

Q. Just tell us what you were going to say.

A. He works for Henslee, and directly what his duties are I'm not sure.

Q. But you knew that, by going to him, you would be able to find out when Mr. Henslee was coming to town.

A. Yes.

[fol. 515] Q. And any other information you needed to get.

A. I found out. My idea, talking to Bill, was to find out when Henslee would be in town because I wanted to talk to him.

Q. And you, of course, knew from his activities that he was associated with Mr. Henslee and you'd be able to find Mr. Henslee through him?

A. That's right.

Q. And that would still be true, of course, wouldn't it?

A. Yes.

Mr. O'Brien: That's objected to.

By Mr. Lees:

Q. Do you know whether Mr. Siess contacts other people on behalf of Mr. Henslee now?

Mr. O'Brien: That's objected to.

The Witness: I don't know that.

By Mr. Lees:

Q. Would it be possible?

Mr. O'Brien: Oh, yes, anything is possible.

The Witness: That would likely be guesswork on my part.

Mr. Lees: All right. That's all I have.

[fol. 516] Let me ask you a couple more questions.

By Mr. Lees:

Q. Do you remember, when referring to Plaintiff's Exhibit No. 1, Mr. Doermer or whoever signed this says:

> "Charles William Clark, Jr., read the above statement and stated it is entirely true. He refused to sign this statement, however, indicating he did not wish to become involved in any kind of difficulty."

Did you read the statement and tell Mr. Doermer it was entirely true?

A. I suppose I must have.

Q. Did you at that time refuse to sign it because you didn't want to become involved in any difficulty?

A. That's right.

Mr. Lees: That's all I have.

CHARLES WILLIAM CLARK, JR.

(Adjourned at 4:00 o'clock p.m.)

[fol. 517] Notary's certificate (omitted in printing).

[fol. 521]

PLAINTIFF'S EXHIBIT No. 1

Philadelphia, Philadelphia County, Pennsylvania
June 8, 1960

My name is Charles William Clark, Jr. I am fifty-one years old, and live at 1622 North 59th Street, Philadelphia, [Owens] Pennsylvania with my wife, Catherine ~~Price~~, and our two children. I work as a Conductor for The Pennsylvania Railroad Company, and have worked for that railroad for about eighteen years.

[Marginal notation—/s/ CWC 4-18-61]

On June 6, 1959 while I was working for the railroad, I sprained and injured the ligaments in my left ankle.

About two months after my accident, Bill Siess, a Regional Investigator for The Brotherhood of Railroad Trainmen in the Philadelphia area called me on the telephone at my residence, and told me he had heard I had been hurt on the job. I am a member of Local 160 of The Brotherhood of Railroad Trainmen, and had known Siess, who also belongs to that local, before. Bill asked me to come down to the office of The Brotherhood of Railroad Trainmen in The Middle City Building at Philadelphia to talk over my case. He told me I should let the Brotherhood handle my claim for me; that the union's lawyer was E. B. Henslee, and that Henslee would get a fair settlement for me. Bill Siess also told me on the telephone that they would have my accident investigated for me, and that if I was hard up for money,

he would see to it that I got a couple of hundred dollars. He didn't say where the money would come from, but I gathered that Henslee would advance it to me. Bill indicated to me that if I did not hire Henslee, I wouldn't get a fair deal from the company, although I don't remember the exact words he used that gave me that impression. Siess is a smooth talker, and he gave me to understand that with Henslee as my lawyer, my job and seniority rights would be protected since Henslee was the union's lawyer.

I met Siess at the union office several days later as requested, and when I arrived at the office, Attorney Edward B. Henslee of Chicago, Illinois, and Bill Siess were both there waiting for me. Siess introduced me to Henslee, whom I had not met before, and they both told me that Henslee was Legal Counsel for The Brotherhood, and would handle my case for me against the company. Henslee told me I had a very good case, but that if it were not handled right, I would get rooked. They gave me a contract form to sign, and I signed it, retaining Henslee as my lawyer. He later settled my claim for $5,000.00.

I have carefully read the above statement, which is typewritten on a single page. This statement is entirely true.

[The above statement is true and I will swear to it if really necessary.

/s/ Charles William Clark, Jr. 4-18-61

Witness;

/s/ J. A. Sherman

April 18, 1961.

Charles William Clark Jr. read the above statement, and stated it is entirely true. He refused to sign this statement, however, indicating he did not wish to become involved in any kind of difficulty.

/s/ John J. Doermer]

[fol. 522] Notice to Take Depositions (omitted in printing)

To Brotherhood of Railroad Trainmen:

* * * * * * *

Bracketed matter indicates a handwritten change and additions.

[fol. 523] [File endorsement omitted]

[fol. 524]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND, VIRGINIA

COMMONWEALTH OF VIRGINIA, ex rel,
Complainant,

—VS—

BROTHERHOOD OF RAILROAD TRAINMEN, et al,
Defendants.

Discovery Deposition of Kenneth H. Gibson—July 6, 1961

Taken at Clinton, Iowa commencing at 9:30 A. M., July 6th, 1961 pursuant to notice dated June 19th, 1961, which notice is attached hereto.

APPEARANCES:

Carroll F. Johnson, Clinton, Iowa, upon behalf of the Complainant.

JAEGER & JAEGER, 715 Foshay Tower, Minneapolis 2, Minnesota by Allen McCarthy for Defendant.

Taken before and reported by:

ALFRED E. BRANDENBURG,
Notary Public, Shorthand Reporter,
1107 No. 3rd St.,
Clinton, Iowa.

[fol. 525] KENNETH H. GIBSON, called as a witness for the purpose of taking his discovery deposition upon behalf of the Complainant, after being first duly sworn by Alfred E. Brandenburg, a Notary Public in and for Clinton County, Iowa, testified as follows:

Examination.

By Mr. Johnson:

Q. Will you give the Reporter your name, please?
A. Kenneth H. Gibson.

Q. Your address?
A. 439 3rd Avenue, North.
Q. Your occupation?
A. Bowling alley employee.
Q. How old are you?
A. 28.
Q. Are you married?
A. Married.
Q. Do you have a family?
A. Yes.
Q. What does your family consist of?
A. Three children, myself and my wife.
Q. Would you give us your wife's name and name the children?
A. Caroline Jane Gibson, the oldest child is Terry Gibson, the second child's name is Kenneth A. Gibson and the youngest child's name is Lawrence Patrick Gibson and, of course, myself.
Q. How long have you lived here in the City of Clinton?
[fol. 526] A. Well, I was born and raised here.
Q. This is your home?
A. This is my home.
Q. Calling your attention to the 19th day of November, 1959, state whether or not you sustained an injury at that time?
A. On what date?
Q. On or about the 19th day of November, 1959?
A. It was the 9th of November.
Q. State if you were injured in the year 1959?
A. Yes, I was injured in the year 1959.
Q. Do you recall the date?
A. November 9th.
Q. Where were you injured?
A. At the switching yards in the City of Clinton.
Q. What was your occupation at that time?
A. I was employed as a switchman.
Q. For whom were you employed?
A. Chicago & North Western Railway.
Q. And this injury was sustained by you in the course of your employment?

A. That is right.

Q. As a switchman?

A. As a switchman.

Q. Will you tell the Reporter the nature of your injury? [fol. 527] A. Well, I was crushed between two box cars, —two cars; I received a shoulder separation, broken collar bone, three broken ribs in my back.

Q. And where were you taken after the injury for treatment?

A. To the hospital here in Clinton.

Q. Which hospital?

A. Jane Lamb Hospital.

Q. Do you remember the time of day you were taken there?

A. Yes, it was in the early hours of the morning, around 2:00, 2:30 or 3:00 o'clock in the morning.

Q. What day of the week was November 9th?

A. I believe it was on a Thursday night, I am not sure.

Q. Who was your doctor?

A. Dr. Joseph E. O'Donnell.

Q. I will now ask you whether or not you received a call from a Mr. E. A. Stouvenel of this City at the hospital shortly after the accident?

A. Well, I had my wife talked to Mr. Stouvenel.

Mr. McCarthy: Your wife called him, in other words?

A. That is right; he come up and saw me at the hospital.

Q. When did your wife call Mr. Stouvenel?

A. I think it was the next day after my accident I am pretty sure; I don't remember; there was a couple days; it [fol. 528] was pretty foggy to me.

Q. Did you ask her to call him or did some one else suggest it to her?

A. I feel certain I asked her to call because there was various things I wanted to find out about my unemployment, things of that nature also, things of that nature also.

Q. What date was it Mr. Stouvenel called, if you know?

A. I believe it was the 3rd, 4th or 5th day; I believe it was either the 4th or 5th day—everything right now, time elapsed, it is pretty hard to put it together.

Q. Had you known Mr. Stouvenel before your injury?

A. Oh, he has, only as the President of my Union; I never made personal contact with him prior to that.

Q. You never talked to him or seen him, you didn't know him to see him?

A. No.

Q. You say he was President of your Union?

A. Yes sir.

Q. Which Union is that?

A. Brotherhood of Railroad Trainmen.

Q. Is that a national Union?

A. Yes sir.

Q. With offices in Cleveland, Ohio?

A. I don't know where the offices are; it is a national organization.

[fol. 529] Q. They have unions similar to the union you belong to all over the United States, or is it that one union?

A. It is a nation-wide association.

Q. How long had you belonged to the union?

A. Ever since I entered in the service of the railroad.

Q. How long did you work for the railroad?

A. Well, I went to work some time in August of 1957 until the time of my accident.

Q. Now, when Mr. Stouvenel came to the hospital, please state what was said at that time by Mr. Stouvenel, if you would please.

A. Well, just like I say the time from when this happened until now is quite a bit of separation; it is going to be hard to recall everything. I know he brought up the unemployment forms for me to fill out and he made a talk about how I was,—I was very concerned about my,—I believe I asked him if I could get any information on what I should do.

Q. Take your time, Kenneth, speak directly to him so he can get it. I will start over—

A. And the obtaining possible protection of myself and my job and—

Q. Well, now, did Mr. Stouvenel call at your bedside at the hospital more than once?

A. Well, after that first visit I asked if he wouldn't keep in contact with me so I could more or less find out any

[fol. 530] information I might have to give as far as protecting my rights as an individual and my association with the railroad and as a Brotherhood Trainman he was in that position to do so; he was more educated on the ways of the railroad than I was and there was a lot of things I didn't know as far as protecting my job; that is primarily what I was interested in at the time, protecting my job and my rights.

Q. I don't believe you answered my question. I was trying to find out how many times he called at the hospital; how long were you in the hospital, that might help you recollect.

A. I was in the hospital twice; I was in a week or a week and a half and out two or three days and then went back in I think for another week.

Q. During the first period you were in the hospital.

A. I think he called back once or twice after the original.

Q. On the first visit there did he explain to you anything at all about the accident and the liability of the railroad?

A. Well, he didn't explain anything about the accident because he didn't know all the facts about it himself. When I was asking him what I should do and what I can do to protect myself, of course, I had heard of various individuals getting hurt and receiving adjustments for their injury and, [fol. 531] of course, I didn't realize how bad I,—how bad my injury was at the time but I wanted to find out what I could do as an individual to protect myself, if there was possibly any legal help I could probably get if I needed it; I wasn't in any position at that time to require legal help and I wasn't interested in it and I asked if Mr. Stouvenel had any information about it and he told me the assistance was available to me if I desired it.

Q. What assistance did he explain was available to you?

A. He explained that the Brotherhood of Railroad Trainmen, our local union has an affiliation with a Legal Aid Department and they specifically do nothing but handle accident cases and such injury cases resulting from an injury while they are on duty on the railroad.

Q. Did he tell you who the attorneys were or where they were located?

A. He told me that they were in Minneapolis and claimed they had the authority from the Brotherhood of Railroad Trainmen to give legal assistance to any one that requested it. He told me their name was Jaeger & Jaeger of Minneapolis where they were from; it was up to me to decide whether I wanted to see them or didn't.

Q. Did he explain the work this law firm had done for other railroad employees that had been hurt?

A. Well, of course, they mentioned the fact that they [fol. 532] do have quite a few cases, just like any other business I imagine.

Q. Did he explain any of the cases to you about boys being hurt?

A. No, he never explained any direct cases to me.

Q. Did he tell you of their service?

A. Yes, he explained,—Mr. Stouvenel never,—this I am thinking about Jaeger & Jaeger; you are still on Mr. Stouvenel?

Q. Yes.

A. I was,—I am loosing track; I was considering myself way up in Minneapolis so we should go back because Mr. Stouvenel didn't tell me some of the things I have been saying in the past.

Mr. McCarthy: Explain that; that is proper for the record. There might be a misconception in the record as far as what Mr. Stouvenel said.

A. I wasn't following you.

Q. What did Mr. Stouvenel explain to you about the Jaeger firm?

Mr. McCarthy: Just for the record, you mentioned that you put in, you made a few comments that were not what Mr. Stouvenel said.

Q. If you have made any misstatements in the record, please correct them now.

[fol. 533] A. Well, the only thing I can truly say Mr. Stouvenel told me the name of the law firm and where it was at; Mr. Stouvenel personally did not tell me of any other cases these people had handled or the amount they

received; that was not involved with Mr. Stouvenel. He told me who the lawyers were and they were available to me if I wanted them. Anything other than what is in the testimony he had nothing to do with.

Q. Did he explain Mr. Jaeger of the law firm's relation with the legal aid association for the Brotherhood of Railroad Trainmen, did he explain the connection of this law firm with the Brotherhood?

A. As I stated prior, Mr. Stouvenel claimed they were affiliated with the Brotherhood of Railroad Trainmen, and they acknowledged them as our Legal Aid Department and any injured railroad person who wanted legal aid these lawyers were available to them, that was it.

Q. Did he explain to you what they would do for you, how they would handle the case?

A. No.

Q. What their fee arrangement would be?

A. No, that is—no, he didn't tell me what any of my costs would be.

Q. Did he explain to you what the Jaeger fee would be?

A. No, I don't believe so because I don't think Mr. Stouvenel had any way of knowing that.

[fol. 534] Q. Did he explain to you that he had other contacts with the Jaeger firm and helped other boys and men that were injured?

A. No.

Mr. McCarthy: The answer was no?

A. I am thinking.

Mr. McCarthy: I didn't mean to interpret.

A. He told me he knew of other cases that had legal aid.

Q. Did he say he had helped them, had recommended this firm? I will ask you whether or not Mr. Stouvenel made the statement to you that this law firm would have you treated by legal aid doctors in Minneapolis?

A. Well, I don't know if he phrased it exactly like that; he told me that the, in order to, if I would decide to have legal aid that the Legal Aid Department would have doctors get an examination on me; he also told me my injuries, to

make sure that there was no conflict in the medical reports from the railroad doctors and the legal aid doctors.

Q. State whether or not Mr. Stouvenel said that the union would provide your expenses to Minneapolis, would pay for your expenses and pay for the doctors and pay for the hotel bill and various examinations?

A. That was mentioned after I decided to achieve legal aid; my expenses were incurred by the Legal Aid Department.

Q. Did he say who would pay your expenses to Minneapolis and pay for the examination?

[fol. 535] A. Well, it was the Legal Aid Department of the Brotherhood of Railroad Trainmen; that is the way it was put to me.

Q. State whether or not Mr. Stouvenel mentioned to you that you might obtain a loan?

Mr. McCarthy: I am going to object to this question. State whether or not you are reading from some statement I assume was taken by the Claim Agent, Mr. Scanlan, who represented himself as representing the Clinton County Bar Association, are you reading from a statement given by this man; that apparently is what you are taking all your questions from?

Mr. Johnson: Please make your objections and let's not argue.

Mr. McCarthy: We are objecting and asking you a question; are you reading from that?

Mr. Johnson: Of course not; I have my own notes.

Mr. McCarthy: You are reading from a statement taken by Mr. Scanlan claiming to be from your Bar Association.

(Reporter reads last question.)

A. I don't recall now of him making any such statement to that effect.

Q. Would you say that no statement was made at all concerning the fact you might obtain a loan for your trip to [fol. 536] Minneapolis and to enable you to pay for the examinations and other expenses pending the outcome of your case?

A. I don't recall of any, no, because these were pretty mixed up days for me; I was in the hospital; my wife was having a hard time, she was six or seven months pregnant; things were pretty rough; it was touch and go to look back on it now; the time that elapsed; it is pretty hard to think of everything.

Q. Did Mr. Stouvenel make any statement to you with reference to how you would get to Minneapolis, how you would meet these lawyers?

A. Well, he stated that the Legal Aid Department was incurring the expenses, supplying it; I figured my union dues entitled me to some help to that; I was paying in pretty good union dues every month.

Q. Did some one else other than Mr. Stouvenel explain to you the procedure concerning the application for a loan pending the settlement of your case?

A. Well, I received a loan but not from the lawyers themselves. I received a loan from the bank.

Q. While you were in the hospital you have no recollection now that any one mentioned to you that you could get a loan?

A. You mean while I was in the hospital?

Q. Yes.

[fol. 537] A. No, I don't recall anybody telling me how I could get money while I was in the hospital; at the time I was getting my unemployment, making application for my unemployment compensation and sickness benefits I don't recall anybody telling me how I could get money; all I can refer to, that I can remember in my mind at the time I was in the hospital I had Mr. Stouvenel come up, I asked him how I could go about getting legal aid, whether I was entitled to it and he explained that to me, how I could get money; I have no recollection of any conversation along those lines; his visits were very short.

Q. Did he also call at your home?

A. Well, he stopped out there a few times to see how I was recovering; he was concerned about my welfare.

Q. How many times would you say he called at your room at the hospital?

A. No more than two or three times; probably twice after the first visit.

Q. How many times did he call at your home?

A. Just twice I think.

Q. Was that before you made your trip to Minneapolis?

A. No, I think it was probably after I had gone to Minneapolis; I don't recall now; it is quite a bit of time.

Q. Now, you did make a trip to Minneapolis, didn't you?

A. Yes, I did.

[fol. 538] Q. Who accompanied you to Minneapolis?

A. I asked Mr. Stouvenel to go along with me due to the fact that he was President of our local union; I wanted someone here to try to lean on; I wasn't too sure of what I was doing; I was quite apprehensive and he being President of the union I felt he was in better position to know right from wrong and keep me from doing anything I might regret later on.

Q. What day did you go to Minneapolis the first time?

A. I think it was in December, about the 14th, 13th or 15th, somewhere around in there; the early part of December, the first or second week.

Q. Did any one else accompany you and Mr. Stouvenel?

A. No, just he and myself.

Q. And who paid for your expenses on this trip?

A. Well, I understood the Legal Aid Department did.

Q. I take it Mr. Stouvenel representing the Legal Aid Department did personally pay your expenses?

Mr. McCarthy: That is a misstatement of fact, what you take is something that is immaterial; the question is who paid your expenses, not what you take.

Q. Do you know who paid for the expenses?

A. As far as I know the Legal Aid Department.

Mr. McCarthy: As far as Mr. Stouvenel, do you know anything about that?

[fol. 539] A. No.

Q. I will ask you this; the person that actually paid the cash was not yourself, it was Mr. Stouvenel, irregardless of where the funds came from, he is the man that paid for the expenses, is that true?

Mr. McCarthy: That is an objectionable question but—

Q. Just state the facts.

A. I never had anything to do with it; everything was taken care of.

Mr. McCarthy: I think we should go into that question whether Mr. Stouvenel paid anything.

Q. I wanted you to just state the facts, the way they happened and I don't ask you to make some statement you are not acquainted with; who actually paid, the person that was there, what person paid them; I am not asking you the source of the money.

A. Well, the tickets, I don't know who bought those; I imagine the Legal Aid Department; we had a light lunch on the train; Mr. Stouvenel paid for that; I suggested I pay for it and he said no, this was on he.

Q. Did you stay overnight?

A. Yes, I did.

Q. Where did you stay?

A. At the Sheraton Hotel, Minneapolis.

[fol. 540] Q. Who paid your expenses there, if you know?

A. That was all taken care of by the Legal Aid Department; I know there was no cash transactions that I saw.

Q. When did you meet with Mr. Jaeger?

A. Well, I got up there in Minneapolis pretty late in the evening, then I met him next morning after staying at the hotel all night.

Q. Which member of the firm did you talk with?

A. I met Mr. Carl Jaeger.

Q. And will you please state whether or not he explained to you the arrangement for the case, how he would handle it?

A. Well, he didn't give me too much information on what he would do on the first meeting; he wasn't too sure that he was interested in defending my case himself. He explained it was too hard to determine whether there was going to be anything again between myself and him until after he had received the full medical report on my injury; he had to determine in his mind whether my injuries were great enough to justify legal assistance and not too much was said until after I was examined by the doctor.

Q. And then when were you examined by the doctor?

A. Well, I believe it was that same afternoon he made an appointment on the 'phone while I was in the office and he asked if I could get to the doctor's office and it was O. K. [fol. 541] so I went over to the doctor's that afternoon and had my medical examination.

Q. What is the name of the doctor?

A. Doctor Goldner.

Q. Do you know where his office is located?

A. It is in Minneapolis.

Q. You wouldn't know the building?

A. No, just half a block from where I was at.

Q. When did you then next see Mr. Jaeger?

A. I don't believe I saw him again for probably a month or so.

Q. Did you go back to the law firm, the office of the law firm after the examination by the doctor?

A. Yes, yes I did; I went back after the examination; he just explained to me that he, of course it would take time to get the medical examination report back; there wasn't much we could do until after we received that before we could determine whether my injuries, what my injuries were.

Q. Did he explain to you then with regard to the fee arrangements; arrangements for his fees?

A. Well, he explained to me basically.

Q. Please state what was said?

A. Well, he explained to me if I wanted the Legal Aid Department to handle the case, what would be done or might be had as far as protecting myself; he explained to me my [fol. 542] share of the, what my expense of their services would be and if that was agreeable with me as an individual, fine; the choice was basically mine and mine alone; I didn't sign up when I went up and met him the first time.

Q. What did he say the fees would be and what the arrangements would be for your particular case?

A. Well, he stated that the Legal Aid Department would handle my expenses and time that I lost, any examination I had by doctors were paid for by the Legal Aid Department and that was primarily the obligation of the Legal Aid Department.

Q. State whether or not any reference was made at this visit with regard to a loan that you might make to tide you over while the case was pending?

A. I told him that I would—

Mr. McCarthy: You can answer that yes or no; say yes or no. That is the question; was any reference made to it at the time of this visit?

Mr. Johnson: This is my witness; I would appreciate it if you would not coach him.

Mr. McCarthy: I am just asking him to answer the question yes or no.

Mr. Johnson: He is answering the questions properly; he is an intelligent young man.

Q. Withdraw the question. Kenneth, please state whether or not you made a loan from anybody subsequent to the [fol. 543] time of your accident to tide you over pending your final settlement of your case?

A. I received a loan through the Marquette Bank of Minneapolis.

Q. When did you make that loan?

A. I don't recall the exact date.

Q. State whether or not it was before or after you visited with Mr. Stouvenel in Clinton?

A. I never received any loans from the bank until after I had talked to them in Minneapolis myself; Mr. Stouvenel didn't have anything to do with the loan.

Q. Who first suggested to you you might obtain a loan?

A. I believe Mr. Jaeger told me the Marquette Bank would probably O. K. a loan if I wanted to go over and see them about it; I don't recall just how it was said, but I know I talked to the Marquette Bank and they arranged for me to get a loan; that was it.

Q. State whether or not any reference was made that you would pay the interest, how the loan would be repaid?

A. I don't recall right now.

Q. Who accompanied you to the bank?

A. Well, nobody accompanied me. Mr. Jaeger gave me a card of introduction and I went over there and introduced myself and talked with them for a while and I received it;

I explained to them I would be paying it back myself from [fol. 544] the money I received.

Q. State whether or not you obtained a loan from this bank and if so the amount?

A. Well, I got a $1,300 loan from the bank; I know that.

Q. Was that made in more than one installment?

A. Yes, I think I got several but it totalled up to $1,300.00.

Q. How did you obtain this loan, these various loans; did you make trips to Minneapolis each time you wanted to borrow money?

A. No, I wrote a letter when I needed more.

Q. Who did you write the letter to?

A. To the bank and they sent me a form and I filled it out and they returned the money, the Marquette Bank.

Q. Who send you the form?

A. The Marquette Bank.

Q. Did you write to the bank for these forms?

A. After the initial arrangement was made they gave me several to take along with me which I would send them in whenever I needed money, I sent them to the bank and arrangements were made there and in a few days I got the money I requested.

Q. You did not send them to the Jaeger law firm?

A. No.

Q. Now, I don't believe you stated what the fee arrangement was; what was the fee to be paid?

[fol. 545] A. The Legal Aid Department received 25% of my claim; any settlement I received as their legal fee which I understand is pretty much of a standard procedure with all these cases.

Q. From that 25% state whether or not the Legal Aid Department was to absorb any expenses from their 25%?

A. The medical examinations and my expenses for trips to Minneapolis to have these examinations were to be incurred by the Legal Aid Department.

Q. That was, as I understand it from your statement, that was to be from their 25, or your 75?

A. No, that was out of their 25%.

Q. What about the interest on the loan, who was to pay that?

A. Well, I was; the loan was mine.

Q. Including interest?

A. Yes.

Q. Now, when did you sign a contract with the Jaeger firm?

A. Well, I signed it when I went up there the first time but I told them I, that it wasn't in effect until I got home and had time to think about it for a few days because I wasn't too sure; we made a gentlemen's agreement and shook hands on it; they weren't sure they were going to handle it, not having received the medical report.

Q. Did you receive a check from any one to reimburse [fol. 546] you for your expenses on your several trips to Minneapolis?

A. No.

Q. Did any one reimburse you for any out of pocket expense at any time?

A. No.

Q. Now, did you settle your case with the railroad?

A. Yes, I have.

Q. And how much did you receive by way of your settlement?

A. My case was settled for $9,000.00; a little better than $9,000.00.

Q. From that sum state whether or not any items of expense were deducted?

A. Well, the lawyers' fees was deducted and the railroad retirement payment was paid back; my unemployment compensation was paid back to the Railroad Retirement Board. I had received a couple advances from the railroad; I had to pay back that I had received from the Claim Agent, those are pretty much it.

Q. What was the net amount you received if you remember?

A. Oh, I think I received 3,900 and some dollars.

Q. Did any one representing the Brotherhood of Railroad Trainmen talk to you about your appearance here today?

A. Well, I had talked to you, when was it, last Saturday?

Q. Yes.

[fol. 547] A. And I told you then no one had contacted me, which is true. Monday Mr. Jaeger called me from Minneapolis, telling me the deposition would be taken this morning and then I told him I had talked to you; he just said come in here and tell the truth and let it go at that. He said there was nothing to worry about. He thought you were sure of what you were doing and he said he felt that I had nothing to worry about so far as repercussions to myself, which is basically the biggest concern is what happens to me; he assured me over the 'phone I hadn't anything to worry about, just to be here, you hadn't subpoenaed me and there was no legal force put on me to be here this morning. I came here of my own free will; he said that was all right, that was all.

Q. Did anyone else talk to you about it?

A. No, in fact I didn't meet Mr. McCarthy until this morning about a minute before you came in.

Mr. Johnson: That is all.

Examination.

By Mr. McCarthy:

Q. Just a few questions; you speak of the Legal Aid Department; you understood, didn't you, that the attorneys you contacted were attorneys representing the Legal Aid Department, is that correct?

A. Yes.

Mr. Johnson: Object to the question on the grounds [fol. 548] it is leading.

Q. It happens to be cross examination of your witness. You understood that?

A. Yes.

Q. These were attorneys representing your union, is that correct?

A. That is right; that is what I meant to imply.

Q. I knew you meant that but I just wanted to clear it up for the record. Now, as far as any trouble, injury or otherwise the person you contact generally is the head of your local lodge?

A. Some one in an official capacity.

Q. Either the chairman or president?

A. Yes.

Q. You knew Mr. Stouvenel and you had your wife contact him?

A. I didn't know him; I knew who he was; I didn't know him as a person.

Q. You knew he was President?

A. Yes.

Q. You had your wife contact him?

A. I have my wife call him.

Q. He brought up some retirement forms, some sickness benefit forms?

A. Yes.

[fol. 549] Q. As far as loans are concerned the railroad made loans?

A. Yes.

Q. They insisted you pay it back?

A. Yes.

Q. Did they make any loans after you retained a lawyer?

A. No, they didn't.

Q. Now, you were seen, were you not, by a fellow by the name of Scanlan?

A. Yes.

Q. Didn't he tell you he represented the Clinton Bar Association?

A. Yes.

Q. As a matter of fact you found out later he represented the Association of American Railroads?

Mr. Johnson: Object to that question as incompetent, irrevelant and immaterial, leading and suggestive and an improper statement of fact.

Q. Didn't Mr. Scanlan say he was from the Clinton Bar Association?

A. He had an introductory letter and said he was working in association with the Clinton Bar Association.

Q. Did you find out later who he actually represented?

Mr. Johnson: Objected to on the grounds that it is improper.

A. Yes.

[fol. 550] Q. Who did you find out he represented?

Mr. Johnson: Same objection.

A. I was real apprehensive talking to anybody that soon after my injury; he showed me this letter and I called them.

Q. This is a letter from the Clinton Bar Association?

A. Yes, the letter had on the Clinton Bar Association; I wanted to know just what was coming off, whether he was under pressure from the Clinton Bar Association, if I had done something wrong or what; I called him on the 'phone; I think it was either Shaff or Smith, I can't recall.

Q. Shaff was Claim Agent for the Chicago & Northwestern?

A. No.

Q. Shaff?

A. Hultsch is but that had nothing to do with Hultsch. I wanted to know what this letter applied to me as an individual; he explained to me that it was just a letter of introduction and that he was actually a representative of the American Association of Railroads, that was it; if I was willing to give them any testimony I could do so; if I didn't want to that was all right too.

Q. That was after the case was settled?

A. That was after the case was settled.

Q. I noticed a statement has been used while you were being examined; did you give him some kind of a statement?

A. Not exactly a statement; we talked about my case; [fol. 551] he wrote down a few details of our conversation.

Q. This was the Scanlan actually representing the American,—Association of American Railroads?

Mr. Johnson: Objected to as improper.

A. Yes.

Q. There is no question that Mr. Scanlan represented the American Association of Railroads, is there? Is there a question about that? You want a clear record, there is no question about that who Scanlan represents? (Foregoing questions addressed to Mr. Johnson). I am just asking you; is there any question about that?

Mr. Johnson: For the record Mr. Scanlan represented the Clinton County Bar Association while in Clinton making this inquiry at our request; I am a member of the Clinton County Bar Association and I represent the Clinton County Bar Association and I do not represent the American Association of Railroads.

Mr. McCarthy: Mr. Scanlan represents the American Association of Railroads, is there any question about that; he has represented them for years; you know that as well as I do.

Mr. Johnson: Go ahead; finish your examination.

Mr. McCarthy: I am not going to hurry my examination; if we have to adjourn, we will adjourn.

Q. Did this fellow Scanlan represent he was a member [fol. 552] of the Bar Association of Iowa?

A. No, he didn't.

Q. Just represented them, is that right?

A. Yes.

Q. Now, did the railroad charge you interest for the loans they made to you before you hired an attorney?

A. I don't know whether they did or not; everything was presented to me in one lump sum.

Q. Did Mr. Scanlan say anything to you about the propriety of your settlement, whether it was good or bad when he talked to you?

A. Well, he felt that I didn't receive as much out of my settlement as I should have.

Q. He told that to you?

A. He stated something to that effect.

Q. Had you had previous dealings with the railroad as far as settlements is concerned?

A. I had a couple minor accidents that made me a little apprehensive of doing any further dealing of my own with the railroad.

Q. Have they been good or bad?

A. Very bad.

Q. As you said before, you never seen me before?

A. No, I never have.

Q. As far as any loans that were made during your [fol. 553] disability you made those loans through the Na-

tional Bank in Minneapolis, through the Marquette National Bank?

A. Yes sir.

Mr. McCarthy: That is all.

(Deposition concluded.)

[fol. 554] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 554a] COMPLAINANT'S EXHIBIT

Clinton, Iowa
September 21, 1960

My name is Kenneth H. Gibson. I reside with my wife and three small children at 1034 9th Ave., South, Clinton, Iowa.

I was formerly employed by the Chicago & Northwestern Railroad as a switchman. I was injured November 19, 1959 while engaged in a switching movement at Clinton, Iowa. I was a member of the Brotherhood of Railroad Trainmen.

Following my injury I was confined in the Jane Lamb Memorial Hospital, Clinton, Iowa. I was under the care and treatment of Dr. J. E. O'Donnell, Clinton, Iowa.

On either the third or fourth day after my injury a Mr. E. A. Stouvenel, Local President for the Brotherhood of Railroad Trainmen called on me at the Hospital. Mr. Stouvenel explained to me about the Legal Aid, Brotherhood of Railroad Trainmen and how the Legal Aid would help me collect damages from the Chicago & Northwestern Railroad and he explained how the Legal Aid would also protect my rights on the Railroad.

Mr. Stouvenel told me that the law firm of Yaeger & Yaeger, Minneapolis, Minnesota were attorneys for the Legal Aid and how the attorneys would have me treated [fol. 554b] and examined by Legal Aid Doctors. Mr. Stouvenel explained to me how the legal aid would pay for the examination and medical treatment given by the Legal Aid Doctors.

Mr. Stouvenel told me that the Yaeger law firm would charge me 25% of whatever amount of money they collected for me. He also told me that the Yaeger firm would arrange for me to borrow money from them while the case was

pending. Mr. Stouvenel explained to me how he would take me to Minneapolis and that all my expenses in connection with the trip would be paid by the Legal Aid.

Sometime around November 25, 1959 I accompanied Mr. Stouvenel to Minneapolis. He took me to see Mr. Carl Yaeger Jr. of the law firm of Yaeger & Yaeger. I discussed my injury with Mr. Yaeger and he sent me to Dr. Meyer Z. Goldner who took several X Rays and made an examination of my injuries. The examination required about a half or three quarters of an hour. Dr. Goldner asked me what treatment I had been receiving from Dr. O'Donnell and [fol. 554c] when I told him he advised me to continue to follow Dr. O'Donnell's advice.

I saw Dr. Goldner on one other occasion but was given only a short examination. I never saw him after the second visit.

After my initial examination by Dr. Goldner I returned to Mr. Yaeger's office. I signed a contract retaining the Yaeger firm. It was arranged through Mr. Yaeger for me to make loans from the Marquette National Bank, Minneapolis, Minn. Mr. Yaeger told me I could repay the bank when my case was settled but that the Yaeger firm would pay the interest.

I made several loans which totaled up to $1,270. In order to get the loans I would write to the Yaeger firm telling them how much money I needed. The Yaeger firm would then send me papers to sign. I would then return the signed papers to the Yaeger firm and in a few days I would receive a check from the Marquette Bank. When my case was settled I had to pay $22.57 interest. I complained to Mr. Yaeger that he had orally agreed to pay the interest [fol. 554d] but he denied making such an agreement and since I had nothing in writing I had to pay the interest. That was also true in the case of Doctor Goldner. He charged me $125.00 which was deducted from my settlement. Mr. Carl Yaeger Jr. had informed me that the Yaeger firm would pay all medical expenses. Mr. Stouvenel told me the Legal Aid would pay for medical examinations.

The expenses for the initial trip to Minneapolis with Mr. Stouvenel which included staying at the Sheraton Hotel was paid by the Yaeger firm.

I made a second trip to Minneapolis sometime about January 17, 1960. I went by myself. I gave Mr. Yeager a statement of my expenses for which I later received a check for the full amount. The January trip was when I made the second visit to Dr. Goldner.

My case was settled August 12, 1960. I paid my own expenses for the trip to Minneapolis. I received a settlement of $9,000. After fees and expenses were deducted I had $3,909.98 as my share of the settlement. As part of [fol. 554e] the settlement I was required to resign my job as switchman.

I have read the foregoing statement and it is true to the best of my knowledge and belief.

Refused to sign.
Read statement and admitted it was true.

/s/ M. P. Scanlan

9-21-60

[fol. 555] Notice to Take Depositions (omitted in printing).

To Brotherhood of Railroad Trainmen:

* * * * * * * *

[fol. 556] [File endorsement omitted]

[fol. 558]
IN THE CHANCERY COURT OF THE CITY OF RICHMOND, VIRGINIA

COMMONWEALTH OF VIRGINIA, ex rel.,
VIRGINIA STATE BAR, Complainant,

v.

BROTHERHOOD OF RAILROAD TRAINMEN et al., Defendants.

Deposition of Gloria M. Loman—July 6, 1961

BE IT REMEMBERED that, pursuant to Notice, and on Thursday, the 6th day of July, 1961, commencing at the hour of 11:10 o'clock in the morning thereof, at the offices of Messrs. Angell, Adams, Gichnauer & Elder, 200 Bush Street, San Francisco, California, personally appeared before me, Janice Giovanni, a Notary Public in and for the City and County of San Francisco, State of California,

GLORIA M. LOMAN, called as a witness, who, being by me first duly sworn, was thereupon examined and interrogated as hereinafter set forth.

[fol. 559] APPEARANCES:

Aubrey R. Bowles, Jr., Esquire, 901 Mutual Building, Richmond 19, Virginia, represented by Messrs. Angell, Adams, Gochnauer & Elder, 200 Bush Street, San Francisco, California, represented by Philip H. Angell, Esquire, appeared on behalf of the complainant; and

Beecher E. Stallard, Esquire, 1223-29 Central National Bank Building, Richmond 19, Virginia, represented by Messrs. Hildebrand, Bills & McLeod, 1212 Broadway, Oakland 12, California, represented by Charles C. McLeod, Esquire, appeared as counsel on behalf of the defendants.

GLORIA M. LOMAN, having been first duly sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows, to wit:

Examination.

By Mr. Angell:

Q. Will you state your full name?
A. Gloria Loman.
Q. Your address? You are the wife, are you not—
A. Yes.
Q. —of Mr.—

Mr. McLeod: Elmo S.
Mr. Angell: Elmo S.?
Mr. McLeod: That is right.
[fol. 560] Mr. Angell: Yes.

Q. You are the wife of Elmo S. Loman?
A. Yes, I am.
Q. Were you present at a conversation between Mr. Loman and a man who stated he was Mr. Dragmire?
A. Yes, I was.
Q. On or about what date was that?
A. It was around July 6th of 1960.
Q. Could you state at about what time that was?
A. It was between 10:30 and 11:00 in the morning.
Q. Who was present?
A. My husband and myself.
Q. This gentleman who called?
A. Yes. Mr. Dragmire.
Q. Did he say his name was Mr. Dragmire?
A. Yes, he did.
Q. I will show you a photograph here which was offered in connection with this deposition as State of Virginia's Exhibit Number 1, and ask you if that is a picture—
A. Yes. That is Harry Dragmire, or the man that said he was Harry Dragmire.
Q. Were you present at the entire conversation?
A. I had stepped into the kitchen a couple of times during the conversation, and I was probably gone maybe a minute or two each time.

Q. Directing your attention to the conversation at which [fol. 561] you were present and only the conversation at which you heard, would you state as near as you can recall in your own words the substance of what was said there by each of you at that conversation on that date?

A. Well, this Harry Dragmire, well, he was a stranger to me at the time he came to my front door, and he introduced himself as Harry Dragmire and wanted to know if he could see my husband, Elmo Loman.

So I asked him in.

He came in and sat down in the front room and I called my husband out of the bedroom. And when he came in, this Mr. Dragmire, again, introduced himself as Harry Dragmire and he was an investigator with the Hildebrand, Bills & McLeod law firm.

And then him and my husband got to talking, and Mr. Dragmire asked my husband how he was feeling and what the extent of his injury was and how the accident happened.

And as I recall, he told my husband that the Hildebrand firm would handle the case and that the fees would be twenty-five per cent plus the expense, and then—let's see.

Oh, yes. He said that if my husband did sign a contract that he would send him to specialists, and due to the fact that the Southern Pacific Hospital would never release the results of the examinations that they made on my husband after the accident.

And then he also asked us what our monthly obligations [fol. 562] were and we told him they were approximately $350 a month.

And he told us that—I think the term he used was a lawyers' trust fund—would advance us this $350 a month until a settlement was made and—let's see.

Q. Was anything said about any contract?

A. Yes, there was. He asked my husband if he would like to sign, and if he would, that he would go down and take pictures immediately of the accident—scene of the accident, as he put it—before Southern Pacific had a chance to clean away all the evidence.

And he pulled some papers out of his pocket. But I didn't read the papers. But it looked like a document of

some type that may have been three or four pages. And the way he implied, it was a contract that he would—that he wanted my husband to sign.

But I didn't read it, so I can't really say for sure that it was, or not.

Q. Did Mr. Dragmire in so many words state that it was a contract?

Mr. McLeod: I think that would be—

The Witness: The implication—

Mr. McLeod: I object to that on the grounds it is leading and also calls for a conclusion.

Mr. Angell: No. Just for the conversation.

Q. The answer is: He did not?

A. He implied. The way it was to me, he implied that it [fol. 563] was a contract and he wanted it signed.

Q. Was there anything he said which led you to the conclusion that he implied it was a contract? That is what I was trying to get at.

When you say "he implied"—

A. When he pulled out the papers and asked him if my husband would like to sign, that to me implied that it was a contract.

Q. Is that what you meant when you said he implied?

A. Yes, yes.

Q. Was anything said that you recall regarding other cases that—

A. Yes. Mr. Dragmire also told us about several of the cases that Hildebrand's firm had settled, and one was a William Cassidy.

And he told us that he had—the Hildebrand firm had gotten $150,000 in settlement for a William Cassidy. And then there was also a Mr. Lock. I don't know the man's—I can't remember the man's first name.

But he told us he had just gotten a settlement of $35,000. And also on a Kenneth West, that they had made a settlement of $32,000 or $33,000 for a Mr. West, Kenneth West.

And then Mr. Dragmire got up and got ready to leave, and as he did, he told us about an accident that he had been in; that he had been injured on the railroad and he had

received a settlement for them from this railroad. I don't know the name of the company. And he said that due to the [fol. 564] fact that the seriousness of this accident, he wasn't eligible for train service any more and that is how he happened to get into this investigating.

And then he left.

Another thing he did say, too, he told my husband not to sign anything for a Mr. Aguer, I believe it was, because he wouldn't treat him fair.

Q. Did you hear anything said as to—to Mr. Dragmire—as to whether Mr. Rider had sent him?

A. No, I didn't.

Q. Did you see Mr. Dragmire give any cards to your husband?

A. I saw him hand my husband something. But I didn't see the cards, no.

Mr. Angell: I think that is all.

Examination.

By Mr. McLeod:

Q. After introducing himself to your husband, Mrs. Loman, his first questions related to how your husband was feeling?

A. Yes, it was.

Q. And the nature and extent of his injuries, and so on?

A. Yes.

Q. Then he also made inquiry as to how the accident happened?

A. Yes, he did.

Q. Your husband told him, in effect, at that time, or in substance, he was having quite a bit of pain in his back and [fol. 565] also quite a bit of pain going down one leg?

A. Yes, he did.

Q. He told him, generally, how the accident happened; that they ran into this—

A. Meat truck.

Q. Meat truck.

Was there anything stated, as you recall, about the possibility he might have a claim against the meat truck, also, there might be a claim against both the Southern Pacific and the meat truck?

A. No.

Q. When your husband told him about the nature and extent of his injuries, and particularly the severe pain down his leg, was there some conversation, generally, then, about disc injuries and the possibility that it would develop slowly, and your husband might be laid up for some length of time on account of it?

A. Yes. Mr. Dragmire told him that he had seen accidents similar to this where a person did have trouble later on in life.

Q. And he mentioned his own case?

A. Yes, he did; where he had received this serious back injury and he wasn't able to do railroad work any more.

Q. It continued to give him a great deal of trouble through the years, and so on?

A. Yes. And he said he thought the seriousness could—

[fol. 566] Q. Could later on develop?

A. Yes, yes.

Q. In talking about some of the cases, he mentioned a couple of cases like Merle Lock and Kenneth West where they had back injuries that developed up to the point they were able to get the company recoveries mentioned?

A. I don't remember him saying anything about back injuries on West or Lock.

Q. Now, at the time this conversation was had about your monthly obligations, isn't it a fact your husband more or less brought the subject up by saying, "Well, if this is a serious injury and I am going to be out of work for a long time, how am I going to live?"

A. My husband and I talked that over long before that.

Q. Well, didn't your husband bring that question up to Mr. Dragmire about what could be done in the event the injury developed where he was going to be out of work for some time?

A. I don't understand what you mean, sir. Would you please repeat it?

Q. There was a conversation about your monthly obligations being $350.

A. Yes, there was.

Q. Didn't that conversation, more or less, start by your husband asking, in substance, not the exact words, now, but in substance, something like this: Well, if I am going to be [fol. 567] laid up for a long time and not able to get my wages, how am I going to live and what can be done to help us get some money?

A. We knew he had railroad retirement that would be coming in every month which would be $200. But I don't remember any statement that my husband brought up about how we were going to live unless he got so much money every month.

Q. You don't remember how the conversation got started?

A. I don't remember how the conversation got started, no.

Q. If I understand you correctly, you told him your monthly obligations were about $350 per month?

A. Yes.

Q. Was this over and above the $200 you expected to get from the railroad retirement?

A. No. That was everything.

Q. That would include everything?

A. Everything, yes.

Q. Well, then, there was some talk about, under railroad retirement benefits, your husband would get $200 a month, or some amount like that?

A. Something like that, yes.

Q. Did Mr. Dragmire then tell you that after you told him, or after he was advised that your monthly obligations would be $350 a month, that the lawyers or Hildebrand's office would advance $350 a month in addition to the $200 and some dollars you were going to—

[fol. 568] A. That is the understanding I had at the time, that he would—that the Hildebrand firm would advance us $350 per month plus the $200 that he would get from the railroad retirement.

Now, that was the understanding I had.

Q. In other words, then if your understanding was correct, you were going to get $200 a month over and above your monthly requirements of $350?

A. That is what the understanding was I had, yes.

Q. Is it possible, now, Mrs. Loman,—it is possible that the conversation was more to the effect that, "Well, if you

need $350 a month to live on for your debts and obligations, and so on, and you are going to get $200 a month from the railroad retirement, then maybe the Hildebrand office could give you the other $150 a month to make the total payment"?

A. The way I understand it, it was $350 per month the Hildebrand firm would advance us. Now, that was the understanding I had.

Q. That you had?

A. Yes.

Q. He told you if you decided to turn the case over to the Hildebrand office, the fee would be twenty-five per cent?

A. Plus expenses.

Q. Plus expenses and plus investigation, is that right?

A. Plus expenses. That is the way I understood it.

Q. Now, as far as signing a contract, about all you know is that, in substance, that he said, in effect, that if you [fol. 569] wanted to sign up and if you would sign up, then he could go ahead and make an investigation and take pictures, and so on?

A. And he pulled some papers—

Q. And he had papers in his pocket?

A. Yes. And it looked like it was two or three papers folded up there. I didn't read it, I don't know if it was a contract. But the way he pulled it out and asked my husband to sign, I—it implied to me that he wanted him to sign a contract right then.

Q. Well, is it possible, looking back on it, that what he pulled out was a regular Brotherhood of Railroad Trainmen questionnaire which asks a lot of questions concerning how the accident happened and the wages, and it is a long form, two pages; and that he wanted the information on that questionnaire?

Could it be that, rather than the fact that it was a contract that he wanted to sign at that time?

A. I can't say if it was, because I didn't read it.

Q. Yes.

Was there, putting your mind back to it—is it possible that, now, that the general tenor and substance of the

conversation was that if you wanted to sign up your case with the Hildebrand office, he would take down all this information on the questionnaire and would have one of the lawyers from the Hildebrand office come and get an official contract?

[fol. 570] A. He didn't mention anything about any of the other lawyers contacting us.

Q. He didn't mention any lawyer at all?

A. No, he didn't, not to my knowledge. Not to my knowledge, he didn't.

Q. Now, prior to Mr. Dragmire coming to your home, had your husband told you that he had, several days previously, gone down to see Stanley Rider, the local chairman of the Brotherhood of Railroad Trainmen?

A. I know he went to the union hall, yes, to inquire about paying his dues or how he would pay them while he was off.

Q. Stanley Rider, you knew, was the local chairman of the Lodge 71?

A. Yes. I know Mr. Rider, yes.

Q. He had visited at your house previously?

A. Yes. He had been at our house once or twice.

Q. You considered him a good friend of yours and your husband's?

A. Yes.

Q. You say that you knew your husband had gone down to see Mr. Rider on his own volition?

A. Yes.

Q. No one had contacted your husband; to your knowledge? No one had called at home or contacted him in any way connected with the Brotherhood of Railroad Trainmen or the Hildebrand office before he went down to see Mr. Rider?

[fol. 571] A. Not that I know of, no.

Q. After he went down to see Mr. Rider, about how many days elapsed before Mr. Dragmire came out to the house?

A. Oh, offhand, I would say maybe two, three days, at the most.

Q. All right. In that interval, did your husband tell you that he had had some conversation with Mr. Rider about his case?

A. No, he didn't.

Q. Did he mention anything about that Mr. Rider had said he would send someone in the Brotherhood of Trainmen out to talk to him about it?

A. Yes. I believe he did say something that Mr. Rider was going to send someone out to the house to talk to him.

Q. All right. Now, do you recall this: Prior to Mr. Dragmire coming to the house and introducing himself, do you remember his telephoning your husband at home and arranging for him to come out to see your husband?

A. I don't know.

Q. You don't know that?

A. No.

Q. You don't remember Mr. Dragmire calling, for instance, that morning before he came out to see if your husband would be at home or not?

A. No.

Q. You don't know whether he did or didn't?

[fol. 572] A. No.

Q. Do you know, Mrs. Loman, of your own knowledge, whether any official of the company or any claims agent had contacted your husband, either in the hospital or at your home, before Mr. Rider—before Mr. Dragmire came out to your house?

A. I don't know if anybody contacted him at the hospital. That I don't know.

But no one came to the house.

Q. Previous—

A. Previous.

Q. —to Mr. Dragmire's coming out?

A. No. Unless I was in the hospital at the time.

Q. You were in the hospital?

A. Yes, having a baby.

Q. Having a baby?

A. Yes.

Q. What was the baby? A boy or a girl?

A. A boy.

Q. Do you know if your husband made a tape recording of the conversation with Mr. Dragmire?

A. That I don't know. He plays around with that thing all the time.

Q. No tape recording was ever played back to you, that you heard of?

A. No, no.

Q. How long had you had the tape recording machine [fol. 573] before this accident?

A. I think we got it in '56 or the first part of '57. Something like that.

Q. You still consider that Mr. Rider is a good friend of yours?

A. Yes, I do.

Q. Has your husband ever consulted Mr. Rider for advice previous to this accident on any questions relating to the Brotherhood of Railroad Trainmen dues or insurance, or anything of that nature?

A. I imagine he has. I couldn't say for sure.

Q. How many occasions that Mr. Rider has been out to your house visiting you socially as a friend before this accident happened?

A. He has been in our house a couple of times, I think.

Q. Have you ever been to his house?

A. No.

Q. Ever attended any social functions together, or anything of that nature?

A. No.

Q. At the time of Mr. Dragmire's visit, neither you nor your husband knew just how long his injuries might incapacitate him?

A. No.

Q. You knew at that time, from what he said and from the way he acted, he was in considerable pain as far as his [fol. 574] back and pain radiating down one of his legs?

A. Yes.

Q. No one, to your knowledge, either Clifton Hildebrand or any lawyer connected with Clifton Hildebrand's office had ever been to your house and contacted your husband in any way, to your knowledge, I guess, at any time right up to the present?

A. To my knowledge, no.

Mr. McLeod: I have no other questions. Thank you very much.

Mr. Angell: No further questions.

It is stipulated between Mr. McLeod and myself for our respective clients that the photograph offered in evidence as State of Virginia's Exhibit Number 1 in connection with this deposition, is a photograph of Mr. Harry Dragmire, and accordingly, the photograph may be withdrawn.

Mr. McLeod: So stipulated.

/s/ GLORIA M. LOMAN

[fol. 575] Notary's certificate (omitted in printing).

[fol. 576] [File endorsement omitted]

[fol. 578]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND, VIRGINIA

COMMONWEALTH OF VIRGINIA, ex rel., Virginia State Bar, Complainant,

v.

BROTHERHOOD OF RAILROAD TRAINMEN et al., Defendants.

Deposition of Elmo S. Loman—July 6, 1961

Be It Remembered that, pursuant to Notice, attached hereto, and on Thursday, the 6th day of July, 1961, commencing at the hour of 9:30 o'clock in the morning thereof, at the offices of Messrs. Angell, Adams, Goehnauer & Elder, 200 Bush Street, San Francisco, California, personally appeared before me, Janice Giovanni, a Notary Public in and for the City and County of San Francisco, State of California,

ELMO S. LOMAN, called as a witness, who, being by me first duly sworn, was thereupon interrogated and examined as hereinafter set forth.

[fol. 579] APPEARANCES:

Aubrey R. Bowles, Jr., Esquire, 901 Mutual Building, Richmond 19, Virginia, represented by Messrs. Angell, Adams, Gochnauer & Elder, 200 Bush Street, San Francisco, California, represented by Philip H. Angell, Esquire, appeared on behalf of the complainant; and

Beecher E. Stallard, Esquire, 1223-29 Central National Bank Building, Richmond 19, Virginia, represented by Messrs. Hildebrand, Bills & McLeod, 1212 Broadway, Oakland 12, California, represented by Charles C. McLeod, Esquire, appeared as counsel on behalf of the defendants.

Mr. Angell: For the record, this is a proceeding entitled Virginia: In the Chancery Court of the City of Richmond; Commonwealth of Virginia, ex rel., Virginia State Bar, Complainant, versus the Brotherhood of Railroad Trainmen, et al., Defendants.

It is the taking of the deposition of Mr. Elmo S. Loman, L-o-m-a-n, and Gloria, G-l-o-r-i-a, M. Loman.

The appearances here, I guess, you have.

I am Philip H. Angell, Senior, of the San Francisco Bar, and Mr. McLeod—what is your full name?

Mr. McLeod: Charles C. McLeod.

Mr. Angell: —of the Oakland Bar, is attorney for the Brotherhood of Railroad Trainmen and other defendants.

I guess that is correct, isn't it?

[fol. 579a] Mr. McLeod: Appearing only in this deposition.

I understand the attorney for the Brotherhood of Railroad Trainmen is a Mr. Beecher, B-e-e-c-h-e-r, Stallard, S-t-a-l-l-a-r-d, 1223-29 Central National Bank Building, 3rd and Broad Street, Richmond, Virginia, who is officially appearing in the action in Virginia, I understand.

Mr. Angell: In connection with that, I will offer into the record to be included in the deposition, what appears to be a Notice of Taking Deposition signed by the Virginia State Bar, signed by Aubrey R. Bowles, Jr., with an Affidavit of Service on the Brotherhood of Railroad Trainmen.

I will just read it:

"On behalf of the defendant, Brotherhood of Railroad Trainmen, I hereby accept legal and timely service of the foregoing notice to take the depositions of Elmo S. Loman and Gloria M. Loman." Signed: Beecher, B-e-e-c-h-e-r, E. Stallard, S-t-a-l-l-a-r-d, Counsel of Record for the Brotherhood of Railroad Trainmen. Signed in Richmond, Virginia, June 19, 1961.

Mr. McLeod: May I see that?

Mr. Angell: If I had a copy of it, I would give it to you. That is the only one I have.

Mr. McLeod: Off the record for a moment.

(Discussion off the record.)

STIPULATION

Mr. McLeod: For the record it will be stipulated all [fol. 580] objections are reserved save as to the form of the question, but that either Mr. Angell or myself may make any specific objections that we so desire at the time.

Mr. Angell: So stipulated, yes.

Mr. McLeod: Thank you.

Mr. Angell: Now then, getting the preliminary matters out of the way, I am, also, informed that under the Virginia law on depositions, that if the other party to the deposition, the one not taking it, wishes copies of the deposition, they have to be obtained in this manner. I am going to tell you what it is. Then you can guide yourself accordingly. I am only giving it to you as information.

If the Brotherhood wants copies, they must agree to pay one-half of the reporter and notary fee, one-half of the cost of the original deposition and the whole cost of the copies they get.

Now, I don't know what the cost of the reporter and notary would be.

(Discussion off the record.)

Mr. McLeod: We will want to enter into that arrangement. I will want three copies. I want three copies.

Mr. Angell: All right. I will want an original and three copies, an original and two copies for the Virginia Bar, and I never take a deposition unless I keep a copy.

Now, I will start with the examination of the witness.

[fol. 581] ELMO S. LOMAN, having been first duly sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows, to wit:

Examination.

By Mr. Angell:

Q. Would you state your full name and your address?
A. Elmo Spencer Loman, L-o-m-a-n.
Q. You reside—
A. At 37117 St. Christopher Street, Newark, California.
Q. That is Alameda County in California, is that correct?
A. Yes.
Q. Your occupation?
A. Brakeman.
Q. How long have you been employed as a brakeman?
A. It will be five years tomorrow.
Q. Who is your employer?
A. Southern Pacific Company.
Q. Are you married or single?
A. Married.
Q. Have a family?
A. Yes.
Q. What does it consist of?
A. Have one boy.
Q. And your wife. Now, were you injured in the course of [fol. 582] your employment some time within the last two or three years?
A. June 29, 1960 at 5:13 a.m.
Q. Where was that injury?
A. At South City, San Francisco.
Q. Will you tell us the nature of the injury?
First, tell us the nature of the accident. What was the accident?
A. I was on the train coming from Tracy to San Francisco and we run into a meat truck.
Q. Where were you at the time?
A. On the head end of the train.
Q. You sustained an injury?

A. Yes.

Q. What did that consist of?

A. When we hit the truck, it threw me to the floor and the water cooler and container fell over and hit me on the back.

Q. Where were you at the time of the injury?

A. On the head end.

Q. The head end?

A. Head end of the train, yes.

Q. But inside?

A. Yes.

Q. Now then, were there any other persons injured in that accident?

A. Yes. The engineer, I understood, had his arm broken in about eight places, and the fireman. I really don't know [fol. 583] how he was hurt or how bad. I don't know how long he was off or anything.

Q. What did you do following the accident?

A. The conductor and other brakeman took me to the Southern Pacific Emergency Hospital in Oakland.

Q. What occurred there?

A. There, in turn, they sent me to the Southern Pacific General Hospital after removing several particles of glass from the hair and ears.

Q. How long were you in the Southern Pacific Hospital in San Francisco? It was San Francisco?

A. Yes, San Francisco.

Q. Just for the record, where is that located?

A. I believe it is 1900 Fell Street.

Q. How long were you in the hospital?

A. Three days.

Q. Following your discharge from the hospital, where did you go?

A. I went— I wasn't discharged until a month later. I had to report back.

Q. Following your leaving?

A. Yes. I was on a leave of absence. I went from the Southern Pacific General Hospital to Oakland and stopped at the Brotherhood of Railroad Trainmen's office on 7th and Pine, I believe it is.

Q. Who did you talk to there, if anyone?

[fol. 584] A. To the local chairman, Stanley Rider.

Q. What date was that; do you recall?

A. I believe that was on the 3rd or 4th. I don't remember for sure. The 3rd, 4th or 5th.

Q. Was Mr. Stanley Rider the only one you talked to at that time?

A. Yes.

Q. How is that Rider spelled?

A. R-i-d-e-r, I believe. Stanley Rider.

Q. Who was present at that time?

A. He was the only one there at the time.

Q. Now, will you state as near as you can recall, the substance of the conversation?

A. I went—

Q. The conversation between you and Mr. Rider.

A. —to ask him about the union dues and the insurance, which I think at the time it was being taken out of my check; how I would pay them while I was off, and should I send them in to him or to the treasury.

And I don't remember exactly what he told me now, but he asked me what I was going to do and about my injuries, and I told him I didn't know yet.

And he asked if it would be all right if he sent someone out to see me. I told him, well, it didn't make any difference to me. That was about it at the time.

Q. Was anything said about your employing a lawyer?

[fol. 585] A. No.

Q. Nothing at all?

A. No, nothing at all.

Q. Did you make any inquiry at that time about employing a lawyer?

A. No, I didn't.

Q. Or having a lawyer represent you?

A. No.

Q. That was about all that was said at that time, is that correct?

A. Yes.

Q. Did Mr. Rider say anything about having someone come out to see you at that conversation?

A. He said he would like to send someone out. He didn't say who it would be or what it was for, or anything.

Q. Now then, did you subsequently have any meeting with anyone with regard to representing you in any capacity in connection with the injury?

A. I hadn't talked to anyone about it up until that time, and then Mr. Harry Dragmire came out to the house to see me. I think that was on the 5th or 6th of July.

Q. Did you know Mr. Dragmire?

A. No. He said he was Harry Dragmire.

Q. I will show you a photograph (handing photograph referred to to the witness through Mr. McLeod), and ask you if you recognize the photograph as being the man who called on you?

[fol. 586] A. Yes, it is.

Mr. Angell: I will offer this in evidence as the Virginia State Bar Exhibit Number 1.

Q. What time of day was this?

A. About 10:30 or 11:00 in the morning.

Q. Who was present?

A. My wife.

Q. Anyone else?

A. No.

Q. Where did you talk with him?

A. In the living room of the house at my home.

Q. Had you heard of Mr. Dragmire or had any conversations with him prior to that time?

A. No, sir.

Q. Now, will you just state in your own words and as near as you can recall, the substance of your conversation with Mr. Dragmire at that time?

What was said by each of you?

A. Well, he come in and wanted to know how I felt, and we talked for a few minutes and he explained to me who he was with and what he could do.

Q. Who did he say he was with?

A. Hildebrand, Bills & McLeod, I believe it was.

Q. Did he state in what capacity?

A. He said he was a regional investigator for the Hildebrand, Bills & McLeod law firm, and also for the Brother-[fol. 587] hood of Railroad Trainmen.

Q. Would you give us the full name of that? That is the Brotherhood—

A. Of Railroad Trainmen?

Q. Of Railroad Trainmen?

A. Yes.

Q. All right. Go right ahead.

A. And he asked me if I had thought anything about suing the company, and I told him, "No."

And he said that I could be hurt worse than I was, and that if I would like for the Hildebrand, Bills & McLeod law firm to handle my case for me, I could sign a contract with him and he could get right away on the case and go over and investigate and take pictures of the accident, and so forth.

So I told him at the time that I didn't think I would be interested. I thought I would wait a while and let him know.

He got up to leave at about that time, and as he started out the door, he turned and told me about an injury that he had sustained with some railroad back east. He didn't —to the best of my knowledge, he didn't mention the railroad, or I don't remember if he did mention the name of the railroad.

And he told me that he had gotten $45,000—$40,000 or $45,000 out of this injury and that is how he became [fol. 588] employed with the firm that he was with at the time.

And then he also told me of the other cases that he had handled here in the Bay area of some of the men I knew, and he asked me if I knew them.

Q. Did he mention any names?

A. Yes. He mentioned William Cassidy, and said he got $150,000 for him, for William Cassidy.

He mentioned a Merle Lock, which he said he had gotten $33,000 or $35,000, and a K. P. West, which he had gotten $30,000, I think, $32,000.

Mr. McLeod: K. P. West?

The Witness: K. P. West.

He told me that mine should be worth around $45,000. It could be a lot worse than I thought it was.

Q. Incidentally, was anything said by Mr. Dragmire as to whether Mr. Rider had told him to call on you?

A. Yes. He said that Mr. Rider had sent him out.

Q. [illegible] that conversation was any mention made of the Southern Pacific claims man, Barney Aguer?

A. Well, he told me I should not sign anything for Barney Aguer. He is the claims agent at the Southern Pacific Hospital in San Francisco here.

And I shouldn't even talk to him, and that to sign nothing for him.

And also he told me that he would send me to their own [fol. 589] doctor here in Oakland to be examined which—that I could not depend on the Southern Pacific staff over here of releasing any information about my injuries to anyone if it did go through court. It would be best for him to send me to their own doctor here in Oakland, which they could get a true report from them.

And he advised me, also, I shouldn't sign any papers. And all this time he was stressing to me that I should employ the Hildebrand, Bills & McLeod law firm.

Q. Did Mr. Dragmire at any time ask you to sign a contract?

A. Well, he, in the course of the conversation, he asked me if I would sign, and he pulled some papers from his pocket at that time, which I don't really know whether it was a contract or not, but it led me to believe it was a contract, because he asked me if I would sign with him, and when I told him I thought I had better wait and put it over, he put the papers back.

Q. You didn't see the papers?

A. No, I didn't.

Q. You couldn't, of your own knowledge, testify whether it was or was not a contract?

A. No, sir; I couldn't.

Q. Was anything said about any advances or payment of any money or loan of any money while you were out of work?

A. Yes. I asked him what they would do if I was out of work, how would I live. He said, "Well, you get your [fol. 590] disability insurance which amounts to approxi-

mately $50 or $51 a week," and he said, "We will also advance you from the lawyer's trust fund," or something, "to be paid back, on the day of the settlement, of $350 a month."

He said, "That should be plenty for you to live on."

Q. Do you recall whether anything was said as to whether you should sign anything for Barney Aguer?

A. He told me not to sign anything for Barney Aguer at the Southern Pacific Hospital in San Francisco.

Q. Who is Barney Aguer?

A. He is the claims agent that is located at the Southern Pacific Hospital in San Francisco.

Q. Was anything said as to how much he thought could be gotten for your injuries?

A. He said he thought, if they had my case, they could get me around $45,000, which I told him at the time I didn't think I was hurt that bad and I had better wait.

Q. Were any cards given to you at that time?

A. Yes. He gave me two cards, one of the Hildebrand, Bills & McLeod office and one of Harry Dragmire.

Q. What did you do with those cards?

A. I gave those cards to, I believe, a Mr. Carter or Mr. Smith.

Q. Now, I think you have already testified to this, but would you state just as near as you can recall what was said about signing a contract with the Hildebrand firm? [fol. 591] A. I told him I didn't think I wanted to sign a contract with the firm at the time, that I would have to wait and think it over.

Q. Had you asked to have Mr. Dragmire sent there by Mr. Rider?

A. No, sir, I didn't.

Q. Had you asked anyone to send any attorney or investigator to you?

A. No, I did not.

Q. Now, in this conversation you had with Mr. Dragmire, did he mention some employee who had been operated on?

A. Yes. He was telling me that there was a person come down from Portland, Oregon. I don't know whether he mentioned the name or not. He was injured and he had

a slipped disc, and it was on the right side and they operated on the left side, I believe he said.

And he said they—the fellow got in touch with him and he took him to his own doctor and they looked the man over and told him, "My God! They operated on the wrong side of you. You have got to go back for another operation."

Q. Was anything said about the amount of the fee?

A. Twenty-five per cent plus expenses. That is what he said they would charge.

Q. Did he say what those expenses would consist of?

A. No, he didn't.

Q. He didn't elaborate on that?

[fol. 592] A. No, he did not.

Q. Was anything said about the railroad, if you settle with them without employing an attorney, that the railroad would cheat you or take advantage of you, or wouldn't make a fair settlement, or any words to that effect?

Mr. McLeod: Pardon me just a moment. I think some of the questions, particularly that one, are quite leading, Mr. Angell.

Mr. Angell: I think maybe you are correct, Mr. McLeod. I will rephrase it.

Mr. McLeod: I object on that ground.

Q. Was any comment or suggestion made by Mr. Dragmire as to what treatment you would receive from the railroad if you attempted to settle directly?

A. Well, he told me that if—if I let the claims agent get to me, and he said, that I wouldn't get a fair settlement. Every settlement they had ever—every case they had ever handled, they had gotten a fair and substantial settlement for their client.

I should be careful not to sign any papers with anyone, as far as the Southern Pacific claims agents, and—

Q. Now, was that substantially all that was said at that time?

A. Yes.

Q. Mr. Dragmire left, isn't that right?

A. Yes, he did.

Q. Now, when did you next hear from Mr. Dragmire, if you did?

[fol. 593] A. On June 29, 1961.

Q. That is the next time you saw him, isn't it?

A. No. Wait. Excuse me.

He called me two or three times after that. I misunderstood you.

Q. Yes. Can you remember approximately—

A. I think he called about the 8th or the 9th.

Q. Of what?

A. Of July. About a week after he come out.

Q. What was said at that time on the phone?

A. He asked how I was feeling and if I had changed my mind, if I had thought about employing the Hildebrand, Bills & McLeod office.

And I told him no. At the time, that I hadn't.

Then he called back again. I think it was on the 25th or 26th, or somewhere along in there. And he asked me, again, if I had thought any more about it.

And I told him, no, that I hadn't.

Then he called me, again, after that, and I told him I had already settled with the railroad. And that was the last time I had heard from him. I told him I had already settled.

Q. Did you, on one occasion, meet Mr. Dragmire out at the Southern Pacific Hospital?

A. I was coming out of the Southern Pacific Hospital and he was going into the Southern Pacific Hospital, and he said [fol. 594] he would like to talk to me, and I told him I was parked where I would have to move the car right away and I didn't have time to talk to him at that time.

Q. About when was that? Do you recall the date?

A. I think it was July 27th or 28th. Somewhere along in there.

Q. Now then, did you subsequently see Mr. Dragmire?

A. You mean the last time I saw him?

Q. Yes.

A. June 29, 1961 in Roseville, California.

Q. What was the occasion of this meeting?

A. Well, he and Stanley Rider came up to see me while

I was working at Roseville, and said, they wanted to talk to me.

And we got in Mr. Rider's car and drove and found the shade. He talked to me, and he said that he understood that I had given a statement to the American Association of Railroads, and I told him I had.

He told me he didn't know what was in the statement, but that whatever I had said, that he would like for me to explain most of it away when I come over to the deposition.

He said he understood I would come over on the deposition, and he wanted to know what days it would be, and I told him the 5th at 2:00 p.m., and also the 6th, which time, on the 6th, it would be given to me on the 5th when I came over.

Q. Did you tell him you were coming over to see me on the 5th?

[fol. 595] A. Yes. I told him I was going over to see the attorney on the 5th, and he also asked me at the time that I should come up to the Hildebrand, Bills & McLeod office and talk to an attorney. He wanted me to be at Mr. Rider's office the 5th at 11:00 a.m. and talk to Mr. McLeod before I came over here.

Q. What did you say in response to that, if anything?

A. I told him I would let him know.

Q. Did you?

A. No, I didn't.

Q. Did you go up to Mr. McLeod's office?

A. No, I didn't.

Q. Or Mr. Hildebrand's office?

A. No, I did not.

Q. Was anything said by Mr. Dragmire as to why he thought you should go up to see someone? Did he mention you see Mr. McLeod specifically?

A. Yes. He said Mr. Hildebrand was in Los Angeles at the time. Mr. McLeod would like to talk to me.

He felt I should have legal counsel, as I was to be over here on the 5th, and he said there would be questions asked of me that I shouldn't have to answer, and I should have legal counsel here on both sides with me.

He said, "They have their counsel and you should have your counsel. I would like to have you ask Mr. McLeod to

go over with you. Furthermore, you can explain away most [fol. 596] of the answers you have given over there," he said, "because you could—when you are asked a question, you can say, well, you didn't see—or you didn't mean to imply that I showed you a contract and I didn't ask you to sign a contract. You can explain most of those answers away."

And he also stated that I would get Mr. Rider in trouble if I did come over and testify, which I told him at the time I didn't mean to hurt anyone. I was just telling what I had heard and what he had told me. And I told him at the time, I said, "Maybe you shouldn't talk to me this way now because you are just telling me more now what I can tell those people over there."

Q. The first time you had seen me was yesterday afternoon, was it not?

A. Yes.

Q. When you went over the conversations which you have testified to here today?

A. Yes, sir.

Q. In that conversation on the 29th of June, 1961, at Roseville, when you were in the automobile, was anything said as to whether you had to come over here or not?

A. At first—

Mr. McLeod: Again, Mr. Angell, I don't like to be objecting. It seems to me you are leading the witness quite a bit, considering he is your witness.

Mr. Angell: All right. I will withdraw it and try to [fol. 597] get at it another way.

Q. In that conversation, did Mr. Dragmire in any way advise you as to—or make any statement with regard to whether you had to appear, either at my office on the 5th, or at this deposition on the 6th?

A. Well, he told me that, at first, if I didn't come over, I could be subpoenaed, which I understood. And then after the conversation went on for thirty-five, forty minutes, he told me I didn't have to appear either day.

I had to appear in the county that I lived in, technically. And I told him I had been ordered over here by the crew

dispatcher of the Southern Pacific Company, and I had an order signed by A. S. McCann.

I also, at the time, asked Mr. Rider, I said, "Is that right? Do I have to appear?", which Mr. Rider didn't answer.

And Mr. Dragmire said, "If I were you, I wouldn't go either day unless they subpoenaed me."

Q. Had you known that you were going to have a meeting at Roseville on June 29, 1961? Had anything been said to you previous to the meeting that Mr. Dragmire and Mr. Rider were going to be there?

A. No, sir.

Q. They just appeared there?

A. Yes, sir.

Q. At that time, is that right?

A. I was eating breakfast in a cafe up there, and one of [fol. 598] the other brakemen—I don't know who. I think it was Mr.—well, I don't remember. He told me Mr. Rider was looking for me. I was eating breakfast and he come in the cafe and sat down and had a cup of coffee with me, and told me he would like to talk with me.

We went outside and went to his car, and Mr. Dragmire was there.

Q. In that conversation was there anything said by any of the parties there with regard to whether Mr. Dragmire had asked you to sign a contract with the Hildebrand firm at your meeting at your home on July 6, 1961?

Mr. McLeod: I will object to that, again, as leading.

Q. Go ahead and answer that.

A. Well, he said he showed me a questionnaire, which at the time he pulled something out of his briefcase, which he had his briefcase with him at the time, and handed it toward me at the time, and said, "This is what I had with me, was a questionnaire."

He took it back and I didn't get a chance to read it. I didn't get a chance to see the paper the first time. I didn't get a chance to see the paper the second time. So I can't say whether it was the same or not.

Mr. Angell: I think that is all.

Examination.

By Mr. McLeod:

Q. Mr. Loman, in this accident that you mentioned, you [fol. 599] said your train ran into a meat truck.

A. Yes.

Q. At a crossing?

A. Yes, in South San Francisco.

Q. After being taken to the emergency hospital in Oakland, you were then taken to the Southern Pacific General Hospital in San Francisco?

A. That is right; yes, sir.

Q. You were there for some three days, right?

A. Yes, sir.

Q. During that time that elapsed, that three- or four-day period up to the time you left the Southern Pacific General Hospital, did you talk to any claim agent or anyone connected with the Southern Pacific about your accident?

A. No, sir, I did not.

Q. Anyone contact you? Mr. Aguer or anyone else contact you?

A. No one contacted me at all.

Q. Either at the emergency hospital in Oakland or during the first three days in the Southern Pacific Hospital in San Francisco?

A. No, sir.

Q. By no one, you mean no claim agent, no official from the company, no one connected with the Southern Pacific?

A. No one. No one.

Q. All right. Then when you left the Southern Pacific [fol. 600] Hospital on the third day, you were returning home to Newark, were you?

A. Yes.

Q. At that time you went down to the Brotherhood of Railroad Trainmen office on 7th Street?

A. Not that day. I think it was the 4th or 5th I went down there about my union dues. Not directly from the hospital.

Q. I understood you to say you stopped at the Brotherhood of Railroad Trainmen office.

A. It wasn't that day.

Q. You went home?

A. Yes. I was taken home.

Q. Who took you home?

A. Harold E. Wood. He is a brakeman for Southern Pacific. He come and picked me up.

Q. How many days were you home before you went down to the—

A. I think it was the second or third day. I don't remember for sure. Either the 5th or the 6th. I am not for sure.

Q. During that interval, had anyone from the Southern Pacific contacted you?

A. No, sir.

Q. Either by telephone or otherwise?

A. No, sir.

Q. Then within a couple of days after you got home, you came in by yourself to the Brotherhood of Railroad Trainmen office on 7th Street, right?

A. Harold E. Wood brought me in.

[fol. 601] Q. Harold E. Wood?

A. Yes, sir.

Q. Is Harold E. Wood any official of the Brotherhood of Railroad Trainmen, do you know?

A. No. He is a neighbor of mine. We work together quite a bit.

Q. During that interval before you went into the Brotherhood of Railroad Trainmen office on 7th Street, had you and Mr. Wood talked about your claim or who your case might be against, or anything of that nature?

A. No, sir.

Q. Had you talked to anyone at all or made any inquiry from anyone as to what your rights were or whether you had a claim against the Southern Pacific or the meat truck that was involved in the accident?

A. No, sir.

Q. You had no conversation along that line with anyone?

A. No, sir.

Q. All right. Then two or three days after you got home, you went in to see Mr. Rider at the Brotherhood of Railroad Trainmen office?

A. Yes.

Q. That office is located and was located at that time on 1833 7th Street, was it not?

A. That is where it is now. I don't know the address.

Q. Mr. Rider was the local chairman of the Brotherhood [fol. 602] of Railroad Trainmen, Lodge No. 71?

You were a member of the Lodge, is that correct?

A. That is correct.

Q. How long had you been a member of the lodge before the accident?

A. Ever since I have been here, and that was about four years.

Q. You knew Mr. Rider during that four years?

A. Yes.

Q. Working for the Southern Pacific?

A. Yes.

Q. You paid dues to him from time to time and had chatted with him, I presume, from time to time?

A. Yes, sir. Yes, sir. Very good friends.

Q. He was a very good friend of yours?

A. Yes, sir.

Q. Up to that time, neither Mr. Rider, Mr. Dragmire or anyone connected with the Brotherhood of Railroad Trainmen, had contacted you about your case?

A. No, sir. I didn't think Mr. Rider even knew I was injured, because he acted surprised, to me, when I went in and told him I had been —

Mr. McLeod: I will ask that go out as a conclusion of the witness.

Q. At any rate, no one had contacted you, neither Mr. Rider, Dragmire or anyone connected with the Brotherhood [fol. 603] of Railroad Trainmen or its legal aid department, had contacted you before you went in to see Mr. Rider?

A. No, sir.

Q. On that occasion you told Mr. Rider what had happened, the nature of the accident, did you not?

A. I told him I was in an accident at South City, San Francisco, and he asked me what happened, and I told him.

Q. You told him a meat truck had run into the train at a crossing?

A. Yes.

Q. Who owned the meat truck?

A. Armour Company.

Q. Had you been contacted by Armour Company or any insurance adjuster up to that time?

A. No.

Q. Having gone in to see Mr. Rider on your own volition, there was some discussion about how your accident happened?

A. No, I wasn't there long enough for a discussion. I wasn't there over five or ten minutes.

Q. It was brought up that the train had run into a meat truck?

A. Yes.

Q. Was there anything said, you had a claim, possible claim, against the meat truck for their part of the case?

A. No, sir, there wasn't.

Q. Was there any question in your mind at that time [fol. 604] against whom you should make a claim?

A. No, sir. Excuse me, now. Will you repeat the question? I might not have understood you.

Q. Up to that time, had you had any discussion with anyone as to whether your claim was against the Southern Pacific or the meat truck involved in the collision?

A. No, sir.

Q. Was there anything said by Mr. Rider during your conversation with him that you might have a claim against either one or both?

A. No, sir.

Q. By that I mean the Southern Pacific or the meat truck.

A. No, sir.

Q. At that time you had some general conversation with Mr. Rider about how the accident happened, I take it?

A. He asked me what happened, and I told him we hit a meat truck in South City, San Francisco. And he acted surprised. And I asked him about the union dues and the insurance, the insurance payments.

Q. Incidentally, what injuries had you received in that accident?

A. Well, I think I just strained my back, is all.

Q. Was your back giving you some difficulty at the time you went in to see Mr. Rider?

A. Yes: My left leg was giving me quite a bit of difficulty.

Q. You had pain in your back and radiating pain down [fol. 605] into the left leg, right?

A. Yes.

Q. At that time, then, Mr. Rider asked you if you wanted to see some representative of the legal aid department of the Brotherhood of Railroad Trainmen, did he not?

A. No, he didn't. He asked me if it would be all right if he sent someone out to see me. He didn't say who; Brotherhood of Railroad Trainmen, someone from the Lodge, or what. He said, "Would it be all right?"

Q. Didn't you understand that Mr. Rider was referring to some investigator or member of the legal aid department of the Brotherhood of Railroad Trainmen?

A. He didn't tell me who it would be, so I had no idea who it would be.

Q. You didn't expect at that time that Mr. Rider would be sending a claims agent from the Southern Pacific out to see you, did you?

A. I don't know what to expect. At the time he told me, I wasn't too interested in talking to anyone, I don't imagine.

Q. Was there any discussion with Mr. Rider about the fact that you were having pain down your leg as well as in your back?

A. No. He asked me no questions, I remember, about how bad I was hurt or if I—

Q. But he was a good friend of yours at that time, right?

A. Yes, sir.

[fol. 606] Q. Your best recollection now is that he merely asked you if it would be all right if he would send someone out to see you to talk to you about your case and your injuries, is that right?

A. Yes.

Q. Now, isn't it a fact that before Mr. Dragmire came out to see you that he telephoned you at your home?

A. I don't remember whether he called or not. He could have. I really don't remember.

Q. He could have? You don't remember, but he could have telephoned you at your home before he came out to see you?

Mr. Angell: Who is "he"?

Mr. McLeod: Mr. Dragmire.

A. I don't remember. He may have called and said he was coming, or not. I really don't remember.

Q. When you had this conversation with Mr. Dragmire and Mr. Rider within the last few days, didn't you at that time tell them you remembered Mr. Dragmire had called at your home?

By "had called," I mean had telephoned you before he came out to see you?

A. They asked the same question you asked me, and I told him I didn't remember whether he called or not. I said, "You could have called."

Q. Were you surprised when Mr. Dragmire arrived at your house?

[fol. 607] A. I didn't know who the man was when he did come in. He told me who he was with. And it never hurts to talk to anyone, I don't guess.

Q. You knew he was coming on the very day he was coming, did you not?

A. No, sir, I didn't. Not that I remember. He might have called. Let's put it that way. I don't remember whether he did call before he came out or he didn't.

Q. Well, you told them that, in this conversation within the last few days, that you made a tape recording of the conversation with Mr. Dragmire, did you not?

A. I told Mr. Rider that, yes.

Q. You told them that within the last few days?

A. Yes, sir.

Q. Isn't it a fact, then, that you knew he was coming and you had it set up, that you would have a tape recording ready to take down any and all conversation with them?

A. I make a tape recording of everybody who comes to the house, even if you come out.

I told Mr. Rider one time he was there to visit me, I made a tape recording of him.

Q. Did you tell him that before? When did you tell him that?

A. On June 29th of this year.

Q. Prior to Mr. Dragmire's coming out to your house, had you talked to any of the officials of the Southern Pacific Company about the possibility of them coming?

[fol. 608] A. I didn't understand that question.

Q. Prior to Mr. Dragmire coming out to your house, had you talked to any of the officials of the Southern Pacific Company about the possibility of Mr. Dragmire coming to your house?

A. No, sir. I didn't even know Mr. Dragmire before he came out to the house. The name wasn't familiar to me.

Q. Prior to his coming there, had you talked to any of the officials of the Southern Pacific Company about your conversation with Mr. Rider and that Mr. Rider was going to send someone out to see you?

A. No, sir.

Q. You are on quite friendly terms with several of the officials of the Southern Pacific Company, are you not?

A. Well, if you say "several"—I know about three trainmasters and two or three of the assistant trainmasters.

Q. You do some extra work selling cars from time to time, do you not?

A. Yes, sir.

Q. You have sold cars, or at least, one car, to one of the trainmasters?

A. Two of them.

Q. Was this before your accident or after?

A. Before, yes, sir.

Q. You say you didn't call any of—either one of the trainmasters, or any official of the company, and advise [fol. 609] them that Mr. Rider of the Brotherhood of Railroad Trainmen was sending someone out to see you?

A. No, sir. Mr. Rider didn't tell me who he was sending out, so I didn't know who he was sending.

Q. But you did have the tape recorder set up so that as soon as Mr. Dragmire introduced himself, everything that he said and you said was taken down on a tape, is that right?

A. No. I didn't have it set up. It is sitting in the living room, which, if I wanted to turn it on, all I have to do is flip the light switch.

Q. You flipped the light switch immediately on his arrival, did you not?

A. I wouldn't be a bit surprised if it isn't on right now.

Q. The question is: Did you?

A. No, sir. I don't know. I don't know whether I have a tape recording of his conversation or not.

Q. You don't know that now?

A. No, sir. In fact, I don't think I have a tape recording of his conversation.

Q. Didn't you tell these gentlemen within the last few days that you took the tape recording of the conversation and turned it over to the representative of the American Association of Railroads?

A. No, sir, I did not.

Q. Now, you say you don't know whether you have one or not?

A. That is correct.

[fol. 610] Q. Did you ever play it back after his visit to your house?

A. No, sir.

Q. Was any mention of a tape recording made during this last conversation you had with Mr. Rider and Mr. Dragmire?

A. Yes, sir, there was.

Q. Who brought it up? You, or either one of those gentlemen? Who mentioned it, originally, in that conversation?

A. I think that I did. Something was brought out—he said, "Well, I didn't ask you to sign a contract."

I said, "Oh, yes, you did."

And he said, "Well, I know I didn't."

I said, "Well, you would know your own voice?"

And he said, "That is correct."

And I said, "I am pretty sure I have it down on tape."

And he says, "What do you mean, you have it down on tape?"

And I said, "I am almost certain I have your voice on tape at the time you were out there."

At the time, Rider said—well, the conversation between the two of them—one would start to say something and the other would put in—

I told Mr. Rider at the time, I wouldn't be a bit surprised if I wouldn't have your conversation down.

Q. You are referring to before the accident?

A. Yes, sir.

Q. Mr. Rider had visited you socially at home?

[fol. 611] A. Yes, sir.

Q. You have never played it back, to your knowledge, for yourself or someone else?

A. No.

Q. You don't know whether the thing exists, is that correct?

A. That is correct.

Q. What do you do, clean off the tapes every once in a while?

A. Yes, sir.

Mr. McLeod: Off the record.

(Discussion off the record.)

Q. Well, Mr. Dragmire, then, when he arrived at your house, wanted to know how you were feeling?

A. Yes, sir.

Q. You told him about the pain in your back and the pain radiating down your leg?

A. Yes, sir.

Q. At that time your back and leg were giving you considerable difficulty, were they not?

A. Yes, sir.

Q. Did Mr. Dragmire at that time tell you he was the regional investigator for the Brotherhood of Railroad Trainmen?

A. Yes, sir, he did.

Q. He was the man that Mr. Rider had sent out to talk to you?

A. Yes, sir, he did. That is right.

Q. I take it from what you said, he also told you at that [fol. 612] time he was employed by the office of Hildebrand, Bills & McLeod?

A. Yes, sir, he did.

Q. Did he tell you Mr. Hildebrand was the regional counsel for the Brotherhood of Railroad Trainmen?

A. I believe he did. I believe he said they represented the Brotherhood of Railroad Trainmen.

Q. Had you heard of Mr. Hildebrand before?

A. No, sir, not—I had heard he was an attorney for the Brotherhood of Railroad Trainmen, but never heard about him in the cases he had settled or had any dealings with, or anything.

Q. If I have made my notes correctly, after he talked to you about your back and the pain going down your leg, he said, generally, that that type of injury might turn into a serious injury, you could have been hurt worse than appeared at the moment?

A. Yes, that is right.

Q. In the course of the conversation, he mentioned some other gentlemen who had had disc problems, and told you how serious a thing like that could turn out, is that correct?

A. Yes, sir, he did. He told me about himself, too.

Q. He told you that he himself, while employed for a railroad, had injured his back and had a ruptured disc, and so on?

A. He said a back injury. I don't recall him saying a [fol. 613] ruptured disc, or anything like that.

Q. Did he tell you it had given him trouble for some years?

A. He said that is why he doesn't work for the railroad now.

Q. Now, as far as this contract is concerned, you say that during the course of the conversation he pulled some papers out of his pocket?

A. That is right.

Q. As you recall, the papers he pulled out consisted of three or four pages?

A. Yes, sir. They were folded up, yes.

Q. Folded up. And they appeared to have questions and answers? Could you tell?

A. I didn't get a chance to see them. He was sitting completely across the room. I couldn't say they were a contract or—

Q. Did he at any time during his conversation with you about how the accident happened, and so on, mention that you might have a claim against both the railroad and the trucking company?

A. No, sir. I don't think so.

He asked me who was at fault. I think he did. I am not for sure. He asked me how the accident happened, and I told him. And he said, "Well, it looks like the Southern Pacific Company is at fault."

I said, "I think so, too."

I really don't know. But, I mean, discussing both [fol. 614] parties, why, I don't think that was ever brought up.

Q. Incidentally, so we will get the picture a little clear, just how did this accident happen? All you have told us is that the train ran into a meat truck on the crossing.

A. The way I understand, we were going 45, 50 miles an hour.

Mr. Angell: Just a minute. Did you see the accident?

The Witness: I was looking out of the window when I heard the engineer start whistling, and I turned around and looked. We almost hit a butane truck. The crossing watchman hadn't closed the gates.

Q. It is a crossing protected by gates?

A. Yes, and a tower there.

I seen the butane truck go by, and that is the last thing I knew before we were another seven or eight hundred yards down the road there, getting up off of the floor of the engine.

Q. You did hear the collision between the engine and the meat truck, which apparently was behind the butane truck, is that right?

A. Yes. And I am sure glad about that, too.

Q. You knew that is what you collided with?

A. I didn't know at the time that is what it was. But there was bacon, turkeys, and everything else, in the engine.

Q. All right. Then you say that after he inquired, generally, as to your condition and if you wanted some advice or representation from the Trainmen, and you told him no, [fol. 615] that you didn't think it was—

A. He didn't mention the Trainmen, the way I understand it.

He said the Hildebrand, Bills & McLeod, the law firm of Hildebrand, Bills & McLeod, which he was an investigator for them, and also the regional investigator for the Brotherhood of Railroad Trainmen.

Q. Well, whatever the conversation was, you told him, in effect, that no, you didn't feel at the time—

A. At the time, yes.

Q. You would consider that, and you wanted to wait and see how you got along?

A. Yes.

Q. With that, he got up to leave. But then, as he was leaving, he told you about his own accident?

A. Yes, sir.

Q. His own back injury, and he was still suffering some effects of it to the point where he was no longer able to work for the railroad?

A. That is correct, yes.

Q. Then he mentioned several other men, members of the Brotherhood of Railroad Trainmen, whom you knew, is that correct?

A. Well, two of them I knew, yes. But one, I know of.

Q. You knew Cassidy, did you?

A. I knew of him. I didn't know him personally, no.

Q. You knew Merle Lock?

[fol. 616] A. Yes, I know him.

Q. And K. P. West?

A. Yes, sir.

Q. Mr. Dragmire told you our office, as regional counsel for the Trainmen, had handled their cases?

A. Yes. He told me they had handled the cases.

Q. There is no question, he told you during the course of the conversation, Mr. Rider had sent him out to see you?

A. Well, I—he told me that Stanley Rider had sent him out to see me, yes.

Q. Now, you say that he mentioned something about the value of your case, and you mentioned the words $45,000.

A. Yes, sir.

Q. Didn't he, in effect, tell you that if your injuries developed to the point that you might have a disc, that the symptoms in your leg would get worse and you might have a disc, or disc might develop, and an operation might be necessary, then in that event, depending on how serious it was and how long you were off work, your case might be worth up to $45,000?

A. He told me a case like mine, that they usually could get around $45,000 for.

He said, "You could be hurt worse than you think you are."

Q. If an injury developed and you had a disc and were going to be off work for a long time?

[fol. 617] A. He said, "In your case, you could be hurt worse than you think you are."

He said, "We usually go in for about $45,000 on a case like yours."

Q. Incidentally, how much were you earning per month at the time of this accident, approximately?

A. Well, I think, three months prior to the accident I think one of them was around $780, and one around $800, $900.

Q. Somewhere around $800 a month was your average at the time?

A. Yes.

Q. He told you that as far as signing any statements, that you should be careful what you sign for Mr. Aguer?

A. Yes. He said, "You want to watch him, because—don't sign any papers for him."

Q. He told you that, as far as the medical situation and the doctors, that it would be difficult to obtain information from the Southern Pacific doctors as to just what injuries

you had and that if you elected to have Hildebrand represent you, that Hildebrand's office would send you to a private doctor and get a report on your condition?

A. Yes. They would send me to a private doctor in Oakland and get the report because the Southern Pacific Hospital wouldn't release any of the reports, whatsoever, about my injuries.

Q. Now, as far as these papers that you say he took [fol. 618] out of his pocket are concerned, they consisted of three or four pages, right?

A. Yes, sir.

Q. Could you see there was certain printed material?

A. No, sir, I couldn't. I don't think he ever did unfold them. I couldn't tell you at all what they were.

Q. You are just assuming it was a contract?

A. He led me to believe it was a contract. He asked me about three times if I would like to sign a contract with the Hildebrand, Bills & McLeod office.

Q. But he didn't say in these words, "If you want to sign, I will sign the contract for you right now"?

He didn't say anything like that to you?

A. He led me to believe he had the contract with him. I couldn't state he did or didn't have the contract.

Q. All right. Then in the course of the conversation, you asked him, if my notes are correct, how you would live if your injuries developed to the point where you couldn't work?

A. Yes, sir. I did ask him questions.

Q. He then asked you if you were getting railroad retirement?

A. He told me I would get around $50. He said, "Well, you will get your disability, which would be around $50, $51 a week, and we could advance you up to $300 or up to $350, and that would give you plenty to live on until your case is settled."

Q. He said, "We could advance it"? Those are the words [fol. 619] he used?

A. He implied that the law firm of Hildebrand, Bills & McLeod—he said it was a lawyers' trust fund or lawyers' fund, or something like that.

Q. But you brought that subject up, the question of—

A. I did ask him, yes.

Q. If you could get any advances, and so on, in the event you turned the case over to us?

A. I did ask him, yes, sir.

Q. At that time you told him, then, you would think it over and decide whether you wanted representation or not?

A. I told him I would let him know, yes, sir.

Q. At that time he gave you one of his cards?

A. He gave me one of his cards and also one of the law firm's.

Q. Do you remember whose name was on the card he gave you?

A. One was the Hildebrand, Bills & McLeod attorneys, and one was Harry Dragmire, Regional Investigator.

Q. Do you remember whether the Hildebrand, Bills & McLeod card had the name of the lawyer on the bottom of it?

A. I think it had Clifton Hildebrand, or something like that.

Q. You don't recall exactly what the situation was? He told you at that time, if I understand it, that the contract for the Hildebrand office, if you decided to have our office represent you, was to be twenty-five per cent plus expenses?

A. Yes, sir.

[fol. 620] Q. Right?

A. Yes, sir.

Q. Then he called you on the phone on a couple of occasions afterwards to find out if you were ready to make up your mind, or what you were going to do?

A. Yes, sir, he did.

Q. On one occasion you met him in the vicinity of the hospital, but didn't—

A. Yes, sir. He was going in.

Q. There was no conversation?

A. He said, "I would like to talk to you."

And I said, "I don't have time right now."

Q. Finally on one of his telephone calls you told him you had settled directly with the company?

A. Yes.

Q. Incidentally, was your settlement wholly paid by the Southern Pacific Company, or did the meat truck contribute anything?

A. No. The Southern Pacific Company.

Q. How much did you get?

A. I think I got $1,875, or—

Q. How long were you off work?

A. I was off 33 days.

Q. Mr. Dragmire, in that first conversation at your house, didn't tell you he had been sent out by Hildebrand or by the Hildebrand law firm? He didn't mention anything [fol. 621] about Hildebrand sending him out to see you?

A. No, sir. He said Mr. Rider had sent him out.

Q. Now then, the next time you saw Mr. Dragmire after that was just within the last week or so, on the 29th of June of this year?

A. Yes, sir, that is right.

Q. He and Mr. Rider came up to Roseville where you were working, looked you up, you got in Rider's car and they asked you about what statement you had given to the American Association of Railroads?

A. Yes. He said he didn't know exactly what I had given, but he said that was—the statements I had given, that I could explain most of the answers away at the deposition, if I wanted to.

Q. Well, have you read the statement that you gave the American Association of Railroads?

A. Yes, sir.

Q. In the last few days?

A. Yes, sir.

Q. Did that statement help you refresh your recollection as to just what had happened and what had transpired between yourself and Dragmire?

A. Well, I don't say it helped me any, because—

Q. It sort of brought it back to your mind?

A. As far as the dates are concerned, yes. I would say, yes.

Mr. McLeod: Do you have that statement, Mr. Angell? [fol. 622] Mr. Angell: Yes (handing document to Mr. McLeod).

Mr. McLeod: May I have just a moment to look it over, please?

(Discussion off the record.)

Q. In this conversation that you had with Mr. Rider and Mr. Dragmire on June 29th, you have stated that someone said, in effect, or Dragmire said, in effect, that you could explain away some of the things in the statement that you gave to the American Association of Railroads.

Is that correct?

A. Yes, sir.

Q. Didn't Mr. Dragmire state, in effect, that the statement probably read that some stranger came to your house, a man you had never seen or never asked for, and that he merely wished you to testify that you had first seen Mr. Rider, and Mr. Rider had told you he would send Mr. Dragmire or some representative out to see you?

A. Well, he wanted me to say that I had gone and asked Mr. Rider to send legal counsel out and that also that I was to say that he didn't ask me to sign a contract, which he said he didn't carry contracts. It was against the law of the State of California for him to carry a contract and to get a contract signed.

He said I should also say that I asked Mr. Rider for him to come out to see me. And he said, "That way, you can [fol. 623] get around—you can explain most of the questions away."

He said, "You should state," he said, "before them over there at the deposition, you asked for me to come out and you asked for legal counsel, and in that way," he said—He tried to imply I was going to hurt Mr. Rider's job if I didn't, and that Mr. Rider was also injured and he couldn't work any more for the railroad.

And he also went on to say that he had just come back from an investigation before the legal chairman for the firemen and had went down and tried to save his job.

Q. In effect, though, didn't Mr. Dragmire advise you that this statement that you signed probably said that some stranger—

A. No, he didn't.

Q. —had come to your house, and that was the general tenor of the statements obtained by the American Association of Railway Investigators?

"A stranger came to my house without any request on my part."

Didn't he use words to that effect in talking with you?

A. No, sir, he didn't.

Q. Actually, that is what you did say in this statement, that a stranger came to your home and you had never seen him before.

A. He was a stranger to me.

Q. Although you knew he was coming?

[fol. 624] A. No. I didn't think I did know he was coming.

Q. You knew someone was coming?

A. I knew someone was coming, because Mr. Rider asked me. He didn't say when. He said, "Is it all right if I send someone out to see you?"

Q. Mr. Dragmire may have telephoned you before he came?

A. He may have, yes.

Q. You, in effect, told Mr. Dragmire in the last conversation that he shouldn't say these things to you, you would probably go over and repeat everything he was now saying to you to the American Association of Railway Investigators, right?

A. Yes. I said, "You can't tell. I might work for the American Association of Railroads."

Q. Do you, by any chance, work for the American Association of Railroads?

A. No, sir.

Q. Do you have any promise of a job from them?

A. No, sir.

Q. Were you somewhat resentful of Mr. Rider and Mr. Dragmire visiting you within the last few days?

A. No, sir. I would be glad to talk to them again today.

Q. Then there was some conversation about whether you had been subpoenaed?

A. Well, he told me, at first, that I didn't have to come over, and then he said, "Well, you could be subpoenaed to go over." And he tried to impress on me, I didn't have to

[fol. 625] appear in San Francisco, that I had to appear in the county that I lived in, if they subpoenaed me.

And he said, "You do not have to go over there."

Q. He voluntarily said you didn't have to come down to San Francisco unless you were subpoenaed?

A. He told me I could be subpoenaed. And he told me, if he were me, he wouldn't show up either day.

That is what I understood him to say. And I told him I had been ordered.

Q. By Mr. McCann?

A. By Mr. McCann, the superintendent of Southern Pacific Company, for me to appear.

And I asked Stanley Rider, "Is that right? Do I have to appear?" which he didn't answer. He didn't say "Yes" or "No."

Q. Then in this last conversation you had with Mr. Dragmire, he told you that he had not attempted to have you sign a contract. He didn't have any contracts with him at the time of his visit to you?

A. Yes, sir, he did.

Q. That was improper, and he didn't carry contracts or attempt to have you sign a contract at the time?

A. That is correct, yes, sir. He said it was a questionnaire.

Q. He or Mr. Rider suggested that before you come over and see the American Association of Railroad Investigators yesterday, on the 5th, that you come in and talk to me?

[fol. 626] A. Yes, sir. Well, he—before I come to talk to the attorney—he said, before I come over and talk to the attorney, "Because he will ask you a lot of questions you don't have to answer."

He said, "Now, I would like for you to come down to Mr. Rider's office at 11:00 on the morning of the 5th, and we will go up and talk to Mr. McLeod."

Q. Well—

A. "Then I would like for you to ask him to go over with you. That way we will have counsel on both sides," he said.

Q. Wasn't there some talk about your appearing yesterday? Not appearing before Mr. Angell, being questioned before Mr. Angell yesterday, but appearing before the

investigator, or the investigator who took your statement, in talking to them?

Wasn't there some talk about that in your conversation with Mr. Dragmire and Mr. Rider?

A. I told him I was coming over to see Mr. Angell over there. He said, "What is the address there?"

I said, "200 Bush Street."

He said, "What is the address there?"

I said, "200 Bush Street."

Q. There was some mention made about your having a conversation, or intending having a conversation with these investigators?

A. No. There was nothing said about an investigator. The only thing said was I was coming over to see the attorney.

[fol. 627] He said it was just a pep talk to prime me for today, if you want the truth.

Mr. Angell: Was it?

The Witness: Well, the only thing I did was look at the statement and read the statement, and tell the same thing now that I told then, so—

Q. Well, you weren't contacted, though, at any time by either Mr. Hildebrand or myself, or by any of the lawyers from the Hildebrand office about coming in and seeing me, since my name has been used, prior to seeing Mr. Angell yesterday, right?

A. Just Mr. Dragmire asked me to.

Q. No lawyer from the Hildebrand office has contacted you at any time, either immediately after your accident or at any time of any of the conversations up to today, is that right?

A. No, sir. You are the first man I have seen.

Q. I am the first lawyer from the Hildebrand office that you have ever seen that you have talked to?

A. Yes, sir. That is true. That is correct.

Mr. McLeod: May I have just a few moments, please?

Incidentally, with whom did you settle your case for $1,800? What claim agent?

The Witness: Carter.

Q. Carter?

A. O. N. Carter.

Q. Where is he located?

[fol. 628] A. San Francisco.

Q. Did you go down to 65 Market to have your conversation with him?

A. No, sir. It is by Third and Townsend over there.

Q. Third and Berry Street?

A. Yes, yes. On Berry Street.

Q. Yes. At that time, when you settled your case with Mr. Carter, did you tell him about your conversations with Mr. Dragmire early in the game?

A. No, sir. I didn't tell him until he come out to the house. I went down there and told them I was ready to talk to them about settling the case, and it was, I think, the next day before he come out to the house.

He wasn't in that day. He was out.

Q. I see. Then Mr. Carter came out to your house in Newark?

A. Yes, sir.

Q. The next day and settled it?

A. Yes, sir.

Q. At that time you told him about your conversations with Mr. Dragmire?

A. He asked me if anybody had contacted me, and I told him Yes. And he said, "Who was it?"

And I said, "Mr. Harry Dragmire of the Hildebrand, Bills & McLeod office."

Well, I didn't know, exactly, the name, you know. I mean, all three names—this Mr. Hildebrand, you know.

[fol. 629] He asked me if I had a card, and I told him, "Yes. I have two of them."

And I picked them up, and I am pretty sure I gave them to him.

Q. Did he tell you they would probably want to get a statement from you as to what was said?

A. I gave the statement.

Q. Before he settled with you, did he tell you they would probably want the statement from you as to the alleged conversations with Mr. Dragmire?

A. No, sir. There was nothing said until after the set-

tlement and we were sitting there drinking coffee, and he asked me if anybody had been out to see me.

And I told him, Yes.

Q. I thought a few moments ago you told me that before the settlement was made, and when he was out at your house, that you had told him about Mr. Dragmire and your conversations.

A. No, sir. He had settled with me before he asked if anybody was out to see me. After the settlement, yes, sir.

Q. You told him about the conversations?

A. Yes, sir.

Q. Did he tell you then that someone else would probably come and want to get a statement from you, someone from the American Association of Railroads?

A. No, sir. It was almost a month after that before I was contacted by anyone from the American Association of Railroads.

[fol. 630] Q. Then on September 28th Mr. Smith from the American Association of Railroads came out and you gave him this statement I have just looked at?

A. Yes.

Q. Within the last couple of months, May 18th, he reconiacted you, did he?

A. Yes, at Napa.

Q. And had you re-sign it?

A. At Napa.

Q. You were working at Napa at that time?

A. Yes, sir.

Mr. McLeod: I think that inasmuch as we have referred to this statement I would like to have it marked in evidence and attached to the deposition.

Mr. Angell: I have no objection. Could I substitute copies? I have photostated, in my office, the statement.

Mr. McLeod: It is perfectly agreeable with me, Mr. Angell.

Mr. Angell: Yes. Then you wish to offer in evidence—we have no objection. We will even offer it as our own, if you wish.

Mr. McLeod: Why don't you offer it?

Mr. Angell: All right. I will offer the statement referred to in cross-examination by Mr. McLeod of Mr. Elmo S. Loman dated Newark, California, September 28, 1960, as State of Virginia Exhibit Number 2, and ask it be so [fol. 631] marked and attached to the deposition.

Do you want a copy of that? I made one.

Mr. McLeod: We should have a copy attached to each deposition, I presume.

Mr. Angell: We can make all the copies you want.

Mr. McLeod: Go ahead.

Mr. Angell: Do you want this one?

Mr. McLeod: Yes.

Mr. Angell: Let's check and make sure it is okay.

It starts off the first page with "Elmo S. Loman," and ends up at the bottom with his signature.

Mr. McLeod: And "told me that," the last words.

Mr. Angell: "Dragmire told me that the," starting the top one, "Hildebrand firm had gotten—"

Down at the bottom, "pocket and."

Mr. McLeod: Yes.

Mr. Angell: Then "Elmo"—wait a minute. "Asked me to sign."

And then at the bottom, "The Hildebrand."

Up at the top—

Mr. McLeod: "Then he."

Mr. Angell: "Then he would," and ending, the written statement is correct.

Then Mrs. Loman's statement is there.

Mr. McLeod: Yes.

Mr. Angell: And the certification. Okay. Now, do you [fol. 632] want that?

Mr. McLeod: I have a copy of it.

Just another moment, please.

Mr. Angell: Yes.

Mr. McLeod: You can always think of something you should have asked on the way home.

Mr. Angell: I have only one I can think of. Do you want me to ask it?

Mr. McLeod: Go ahead.

Mr. Angell: You were mentioning in the conversation of June 29th at Roseville, some talk about the use of the tape recorder.

Was any part of that conversation heated or was there any anger displayed by any of the parties there?

The Witness: No, sir. I don't think so.

Mr. Angell: I have no further questions.

By Mr. McLeod:

Q. Along that line, didn't Mr. Dragmire say, in effect, that you really set him up for a patsy, or words to that effect?

A. Yes. He said, "It looks like I was set up for a patsy before I even got up there." He said that about four or five times as he was talking along.

Q. It is your sworn testimony that before he came out, you hadn't had any conversation with any officials or claim agents of the company?

A. That is correct, sir.

[fol. 633] Q. This tape recording was purely your own idea?

A. Yes, sir.

Q. How long had you owned the tape recorder before that incident?

A. Let's see. About four years.

Q. Do you still have it?

A. '56.

Q. Do you still have it?

A. Yes.

Mr. McLeod: I have no other questions at this time.

Mr. Angell: No further questions.

May Mr. Loman be excused?

Mr. McLeod: What about signature? Do you want him to sign it?

Mr. Angell: Yes. I will have Mr. Loman read it and make any corrections he deems necessary and sign it, of course, and we will see that you are notified when that is done, Mr. McLeod.

/s/ Elmo S. Loman

[fol. 634] Notary's certificate (omitted in printing).

[fol. 635]

COMPLAINANT'S EXHIBIT 2

Newark, California
September 28, 1960

Elmo S. Loman states: I reside at 37117 St. Christopher, Newark, California. I was injured June 29, 1960 while working as a brakeman for the S P Co. I was confined to the S P General Hospital for three days following my injury. No attorneys or other persons approached me, while I was confined to the hospital, to try to get me to employ anyone to handle my case. On July 5, 1960 I went to my B of RT Union Hall in Oakland to inquire about payment of my union dues and insurance during the time I was to be off duty. I talked with Stanley Ryder the Local Chairman. Mr. Ryder asked me if I had a lawyer to handle my case. I told him that I did not. Ryder then told me that he would have a representative of the B of RT law firm call on me. Ryder did not mention the name of the law firm nor did he say just who from this law firm would call upon me. I did not make inquiry of Ryder about employment of a lawyer or law firm. It was he who started this conversation. On July 6, 1960 a stranger came to my home in Newark at about 11:00 a. m. This stranger introduced himself to me as Harry Dragmire. Harry Dragmire told me that he represented the law firm of Hildebrand, Bills & McLeod of Oakland which law firm represented my union. Dragmire told me that he was calling on me at the request of Stanley Ryder. Dragmire told me of other cases Hildebrand, Bills & McLeod had handled and bragged about the amounts they had recovered for the men. Dragmire told me

Elmo S. Loman

[fol. 636] that the Hildebrand firm had gotten a large settlement for William Cassidy an injured S P man. As I recall, Dragmire told me that the Hildebrand firm had gotten $150,000.00 for Cassidy. Dragmire told me that the S P Co. would not have paid Cassidy anything unless he had hired the Hildebrand law firm. Dragmire told me that

I should not believe anything Barney Aguer, the S P Claims Agent, told me and warned me not to sign anything for him. Dragmire told me that if I would sign a contract for him he would immediately take photos and make other investigation. Dragmire told me that if I would sign the contract he would arrange to have me examined by medical specialists as the S P Hospital Department would never disclose the result of their examinations. Dragmire told me that if I would sign a contract for him he would arrange for the Hildebrand law firm to loan me $350.00 a month while I was off work. Dragmire told me that, if my back injury was as serious as it might well be, the Hildebrand law firm could get me about $45,000.00 in settlement of my case. My wife was present during this visit of Harry Dragmire to my home. Dragmire gave me his calling card as well as a card of the Hildebrand, Bills & McLeod law firm. Dragmire told me the Hildebrand firm would handle my case for twenty-five percent plus expenses. Dragmire removed some papers from his pocket and asked me to sign

[fol. 637] a piece of paper which he said was a contract with the Hildebrand firm. Dragmire told me that my back injury might be very serious and told me of a back injury he had. I told Dragmire that I did not want to hire the Hildebrand law firm. I did not ask Stanley Ryder to send Harry Dragmire or any other representative of the Hildebrand firm to see me. Harry Dragmire told me that he injured his back while working for some railroad and that the B of RT lawyers handled his case and did a good job for him. Dragmire said that his back condition was such that he could not return to railroad work and that he had taken his present job as a result of this disability. Dragmire was driving a new Lincoln auto. Dragmire telephoned my home three or four times after he called at my home and each time he urged me to hire the Hildebrand, Bills & McLeod law firm. On or about July 27, 1960 at the S P General Hospital I chanced to meet Harry Dragmire coming into the hospital just as I was leaving. Dragmire said that he would like to talk to me. I told him that I did not have time to talk to him. A few days after this chance meet-

ing with Harry Dragmire, he again telephoned me. At that time I told him I had settled my case in order that he would not bother me anymore. When Harry Dragmire called on me at my home he made it clear to me that if I signed the contract for him employing the Hildebrand then he would

Elmo S. Loman

[fol. 638] investigate my case. Dragmire made it clear to me that the fee of the Hildebrand, Bills & McLeod law firm would be twenty-five percent and that in addition I would have to pay for the cost of his investigation as well as other expenses. I have read this four page statement and it is correct.

/s/ ELMO S. LOMAN

Witness: W. A. Smith, September 28, 1960; 7:00 P. M.

Gloria M. Loman states: I have read this four page statement given by my husband, Elmo S. Loman this date. I was present at the time Harry Dragmire called at our home and tried to get my husband to sign a contract employing the Hildebrand, Bills and McLeod law firm and I verify that that portion of my husband's statement concerning Harry Dragmire's conversation with my husband on that occasion is true and correct as set out in the above statement.

/s/ GLORIA M. LOMAN

Sept. 28, 1960

Witness: W. A. Smith, September 28, 1960; 7:15 P. M.

[fol. 639] I have this day read again the attached statement consisting of four pages, which I gave and signed on the 28th day of September, 1960.

I certify (or declare) under penalty of perjury that the matters set forth in my attached statement are true and correct.

Executed on May 18, 1961 at Vallejo, California.

Signature ELMO S. LOMAN

[fol. 640]

HILDEBRAND, BILLS & MCLEOD
Attorneys at Law

GLencourt 1-6732
1212 Broadway
Oakland 12

CLIFTON HILDEBRAND

HARRY S. DRAGMIRE
Regional Investigator
Legal Aid Department
Brotherhood Railroad Trainmen

190 Hill Top Crescent
Walnut Creek, California
Yellowstone 5-4538

Lodge 887

[fol. 641]

NOTICE TO TAKE DEPOSITIONS (omitted in printing)

To Brotherhood of Railroad Trainmen:

* * * * * * *

[fol. 643] [File endorsement omitted]

[fol. 644]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

No. .....

COMMONWEALTH OF VIRGINIA, ex rel.,
Virginia State Bar, Complainant,

—vs.—

BROTHERHOOD OF RAILROAD TRAINMEN, et al., Defendants.

Deposition of Virginia Lee Troxtell—July 13, 1961

APPEARANCES:

For Complainant: William T. Sharp.

For Defendants: Henslee & Henslee, By Robert E. Harrington.

[fol. 645] Deposition of VIRGINIA LEE TROXTELL, a witness produced and sworn before me, Don Oakes, a Notary Public of Marion County, State of Indiana, at the office of Metcalf, Mahan, Mahan & Connor, 1406 Fletcher Trust Building, in the City of Indianapolis, County of Marion, State of Indiana, on the 13th day of July, 1961, pursuant to Notice to Take Depositions hereto attached. This deposition was taken on the part of the complainant in a certain action now pending in the Chancery Court of the City of Richmond, Virginia, wherein Commonwealth of Virginia, ex rel., Virginia State Bar, is complainant and Brotherhood of Railroad Trainmen, et al. are defendants.

[fol. 646] VIRGINIA LEE TROXTELL, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, relating to said cause, deposes and says:

Direct examination.

Questions by Mr. William T. Sharp:

1 Q. State your name for the record, please.
A. Virginia Lee Troxtell.
2 Q. Where do you live?
A. 1209 Olive.
3 Q. Indianapolis, Indiana?
A. Indianapolis.
4 Q. Are you the wife of Lawrence E. Troxtell?
A. Yes.
5 Q. Were you the wife of Lawrence E. Troxtell, married to and living with him on the 13th day of June, 1959?
A. Yes.
6 Q. Did he sustain an injury on that date?
A. Yes.
7 Q. For whom was he working on that date?
A. Pennsylvania Railroad.
8 Q. Briefly the nature of the injury was what?
[fol. 647] A. Well, as well as I can understand he had a broken hand. I never did get too clear on the deal because I didn't ask him. It wasn't none of my business. He tells me what he wants me to know and that's it.
9 Q. Now there is here in this room today present, besides the Reporter and yourself and myself, Mr. Robert Harrington from Chicago. Have you ever met Mr. Harrington before?
A. No, not until this morning.
10 Q. Following your husband's injury, did he later make a settlement with his employer whereby he was paid a certain sum of money for the injury he had received?
A. Yes.
11 Q. Do you recall about when that settlement was made?
A. It was the latter part of April.
12 Q. April 1960?
A. No. Yes, it was, too. I can't remember. It's been so long ago.
13 Q. Now will you in your memory go back to the date of this injury and recite for this statement today what took place from the time of the injury to the time of this

settlement with reference to his treatment, and just tell us how this settlement came about.

[fol. 648] A. Well, as near as I can remember, the night he got hurt they took him to Community.

14 Q. You are referring to the Community Hospital here in the city?

A. Here. They checked his hand and put one of those rubber things around it. The hand didn't get any better. Dr. White here sent him to Dr. Brady and they put him in a cast. He was in three of them during the summer. And from there on, I can't say what happened in Chicago. He told me he went up there and they gave him a physical.

15 Q. Well, now, before the time that he went to Chicago, were you present in your home when anyone came to the house to talk to him about the injury?

A. Yes. George Rummel came out to the house on several occasions. I don't know how many. I don't remember that. And on one occasion he brought another man out there who he introduced as Bob Crago.

16 Q. Do you remember, Mrs. Troxtell, about how long it was after the injury until Mr. Rummel came out with Bob Crago?

A. It was just before Thanksgiving. It was cold weather because I was worried about Thanksgiving dinner.

17 Q. That was in the year 1959, the same year as the injury?

[fol. 649] A. Yes.

18 Q. Were you present at the time that your husband, Mr. Rummel and Mr. Crago discussed this injury?

A. Part of the time.

19 Q. If you were, will you relate for the record what that discussion was, just what was said?

A. Well, like I said, I was in and out. I didn't stay in there all the time. They called me in and they said they wanted my presence in there for something. I don't know what it was now. But they wanted him to go to the Legal Aid and settle because they—the way I understood it—

Mr. Harrington: And by "they" who are you referring to, which gentlemen?

The Witness: Bob Crago and George Rummel both.

Mr. Harrington: What did they say? What was said?

The Witness: Well, as near as I can remember, they promised him that they would get his hand fixed back up in condition because the old man said that was what was worrying him because he is a musician and he was worrying about never being able to use that hand right. They [fol. 650] promised if he would go to Legal Aid, they would see to it he could use that hand again.

20 Q. When you say "they" you are talking about Mr. Crago and Mr. Rummel?

A. Yes.

21 Q. That's the gist of that conversation as you best remember it, is that right?

A. Yes. I was in and out. I don't remember too much about it. It did cause friction in our home. The man should have been working and we wasn't getting along too good. He was laying around the house and getting on my nerves and we was spatting back and forth quite a bit.

22 Q. Did you discuss the matter of their visit with your husband then, or afterwards?

A. No. Well, he asked me, "Ginny," he said, "what is your opinion?" I said, "It is your hand. It is your job. You use your own judgment." I said, "I can't tell you." I said, "Whatever you do, it is O.K. with me because it is you that is hurt. I am not."

23 Q. What was it he wanted your opinion about?

A. What he should do. He said, "Do you think I should go to Legal Aid or stay with the railroad because the [fol. 651] railroad is treating me fine." That's the way he put it. He said the railroad was—

24 Q. All right. Now just answer the questions. Did your husband after that visit from Mr. Crago and Mr. Rummel go to Chicago?

A. Yes. It was after that that he went up there. George brought some papers out there. I don't know what they were. He had to sign them to give his consent for Legal Aid to take his case.

25 Q. How long was that before he went to Chicago that that took place?

A. It seemed to me like the first time he was up there was in February. Now I am not sure about that. I don't remember.

26 Q. All right. Did you go to Chicago with him at any time later on?

A. The last time he went up—I didn't go with him, no, but I did meet him there.

27 Q. Was that the time you settled it or before that?

A. It was when he got his settlement.

28 Q. You didn't meet Mr. Harrington at that time?

A. No. I seen him in a restaurant. We ate breakfast in the same restaurant. He had his back to us. My hus- [fol. 652] band said, "That's Mr. Harrington over there at that table."

29 Q. That is this same Mr. Harrington who is here in this conference room today?

A. I think so. I just seen the back of his head.

30 Q. Did you ever see Mr. Crago any more after that?

A. No. We talked to him by phone, but that was all.

31 Q. Were you present in your home on March 23, 1961 at which time one M. P. Scanlan took a written statement from your husband with reference to the facts of this accident and the settlement thereof?

A. Yes.

32 Q. Did you examine the statement after it was taken?

A. Yes.

33 Q. Did you sign it?

A. Yes, I did.

34 Q. I will hand you what has been marked for identification purposes Complainant's Exhibit 4 and ask you to examine it and state for the record what it is, if you know.

A. Well, this whole thing here?

35 Q. Yes.

A. I don't know how to even word that.

36 Q. Well, you had testified previously that you were [fol. 653] present when Mr. M. P. Scanlan took a written statement from your husband.

A. Yes.

37 Q. Now you have examined this instrument. Tell us whether that is the statement that he took.

A. Yes. There are things in there I even forgot about until I read that again.

38 Q. But you were present when it was taken?

A. Yes.

39 Q. And you signed it at that time, is that right?

A. Yes.

40 Q. Do the statements made there accurately represent what took place at the time Mr. Scanlan was in your living room and what your husband told him?

A. Yes.

41 Q. And you were present all during the time that was being taken?

A. Yes. I was there all the time when that was taken. But when they was coming out to our house, I wasn't. Because at that time we rented from my dad and I would go to Mom's a lot of the time when the men were there because it wasn't none of my business. I was in and out.

[fol. 654] 42 Q. When the men were there—who are you talking about, what men?

A. That was Mr. Crago and George Rummel. But this man, I was at home at all times, right there.

43 Q. Prior to your husband getting a settlement on this matter, did he turn it over to the Brotherhood of Railroad Trainmen to let them handle it?

A. Yes.

44 Q. And after that was done and this settlement was reached?

A. Yes.

45 Q. Do you know anything else about the matter of your husband's settlement for his injury other than what you have stated here?

A. No.

46 Q. What you have stated here is all you know about it, is that right?

A. When he made the statement here, I found out more then than I knew at the time. There was things that he told that he didn't tell me because he and I have come to an agreement. He works the railroad and I keep the home up. I don't ask him no questions and he don't ask me no questions.

47 Q. You don't talk shop much in your house?

[fol. 655] A. No.

Mr. Sharp: I believe that is all.

Cross examination.

Questions by Mr. Robert E. Harrington:

48 Q. Mrs. Troxtell, when the statement was taken by Mr. Scanlan that you have just referred to you were present in the room all the time it was being taken, is that correct?

A. Yes.

49 Q. And you read it before you signed it?

A. Yes.

50 Q. And there are things in there that you don't know about personally?

A. Well, I knew about it but when it come right down to the facts, dates and things like that is what I didn't know a lot about. I didn't keep up with things like that.

51 Q. And as far as you know, Mr. Crago only came out to your house once?

A. To the best of my knowledge, now, he was there that one time that I can remember. I had even forgotten about being in Chicago twice until I read this over again. And I [fol. 656] told the man that.

52 Q. Did Mr. Scanlan come back to your house after he took that statement?

A. Once.

53 Q. At that time did he make corrections on the statement?

A. Yes. There was something in there he wanted my husband to correct and I forget what it was even now.

54 Q. Is that the time that Mr. Scanlan asked you to, if you would give a deposition as to what was in that statement?

A. I believe it was.

55 Q. Did Mr. Scanlan tell you that your time and expenses would be taken care of?

A. Yes, he did.

56 Q. Did he tell you how much he would give you for your time and expenses?

A. No.

57 Q. Did he tell you he would pay you for the time of taking the statement and also for testifying in this deposition?

A. That one, but not this one.

58 Q. But as far as your coming here today to testify, your time and expenses would be taken care of. Is that [fol. 657] right?

A. He said they would be.

59 Q. Did he say who would pay you for them?

A. No.

60 Q. He didn't tell you how much you would be paid?

A. No.

61 Q. Did Mr. Scanlan put in that statement that was taken on March 23, 1961 everything that was said between your husband and himself?

A. Yes.

62 Q. There was no conversations other than what was in this statement?

A. That's all. They had small talk about it because several times we would forget and one of us would remember dates or something and he had to start that over two or three times.

63 Q. Did Mr. Scanlan have a file on the case, too?

A. I don't know. He had a brief case, but I couldn't tell you whether he did or he didn't.

64 Q. Did he refer to any papers, if you recall, when he took the statement?

A. I never paid that much attention to it.

65 Q. And Mr. Scanlan wrote this out in his own handwriting?

A. Yes.

[fol. 658] 66 Q. Is this the first time that you saw this statement since the time that you signed it?

A. No. This gentleman here brought it out to the house. I forget even what night you was out there.

Mr. Sharp: Tuesday.

A. Well, he brought it back for him to make the corrections and then you brought it out. That's the second time I seen it.

67 Q. That's the attorney for the complainant here, is that correct?

A. Yes.

Mr. Harrington: I have no further questions.

Mr. Sharp: At this time the complainant would ask that Complainant's Exhibit 4 be attached to and made a

part of this statement given by the witness and for the further purpose of the corroboration of the truth and veracity of the deposition taken this date by her husband, Lawrence E. Troxtell, wherein the same statement was submitted as part of the record.

Mr. Harrington: I will object to it being made a part of this record or being admitted into evidence on the [fol. 659] grounds (1) that it is not a statement of this witness and (2) that it is a self-serving document and (3) that the party who took the statement is not present to identify same and in whose handwriting the statement is in and is not subject to cross examination.

That is all.

Mr. Sharp: I have nothing further.

And Further Deponent Saith Not.

(Signature Waived.)

[fol. 660] Notary's certificate (omitted in printing).

[fol. 662] [File endorsement omitted]

[fol. 663]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

No. .....

COMMONWEALTH OF VIRGINIA, ex rel.,
Virginia State Bar, Complainant,

—vs.—

BROTHERHOOD OF RAILROAD TRAINMEN, et al., Defendants.

Deposition of Lawrence Edward Troxtell—July 13, 1961

APPEARANCES:

For Complainant:
William T. Sharp.

For Defendants:
Henslee & Henslee,
By Robert E. Harrington.

The deposition of Lawrence Edward Troxtell, a witness produced and sworn before me, Don Oakes, a Notary Public of Marion County, State of Indiana, at the office of Metcalf, Mahan, Mahan & Connor, 1406 Fletcher Trust Building, in the City of Indianapolis, County of Marion, State of Indiana, on the 13th day of July, 1961, pursuant to Notice to Take Depositions hereto attached. This deposition was taken on the part of the Complainant in a certain action now pending in the Chancery Court of the City of Richmond, Virginia wherein the Commonwealth of Virginia, ex rel., Virginia State Bar is Complainant and Brotherhood of Railroad Trainmen, et al. are defendants.

[fol. 665] Lawrence Edward Troxtell, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, relating to said cause, deposes and says:

Direct examination.

Questions by Mr. William T. Sharp:

1 Q. State your name, please.
A. Lawrence Edward Troxtell.
2 Q. Where do you live?
A. 1209 Olive Street, Indianapolis.
3 Q. What is your business or occupation?
A. Yard brakeman, Pennsylvania Railroad.
4 Q. How long have you worked for the Pennsylvania Railroad?
A. Five years.
5 Q. Are you a member of any trade union or association?
A. BRT.
6 Q. What does that mean?
A. Brotherhood of Railroad Trainmen.

Mr. Harrington: I object to Mr. Troxtell referring to notes at this time.

7 Q. To what local lodge or chapter of that Union do you [fol. 666] belong?

A. I believe 261 is the number on it.

8 Q. Calling your attention to June 13, 1959 were you employed by the Pennsylvania Railroad at that time?

A. Yes, sir.

9 Q. As a brakeman?

A. As a brakeman.

10 Q. Would you just recite briefly and in your own words what, if anything, happened to you on that date with reference to your job?

A. On June 13?

11 Q. Yes.

A. That was the night that I was riding the second trick hump and injured my left hand.

12 Q. Briefly how did that injury occur?

A. Well, I was setting the hand brake on a gondola of steel riding off the hump and the brake gave way and caught and my hand slipped under the brake club.

13 Q. Where specifically did that accident take place?

A. At Hawthorne Yards.

14 Q. That's here in the city?

A. Yes.

15 Q. What did you do after having sustained this injury?

[fol. 667] A. I went back up to the hump and reported to the conductor.

16 Q. When did you first receive medical care?

A. Well, they took me to the hospital that night and put a rubber bandage around it that night and X-rayed it.

17 Q. When did you first lose work as a result of this injury?

A. Well, I believe I marked off the next day. I didn't work the next day. And the best I can remember, I was off five days and then went back to work. That's the best of my memory.

18 Q. To whom, if anyone, did you thereafter have an occasion to discuss this injury?

A. I called Mr. Rummel, George P. Rummel.

19 Q. Is that spelled R-u-m-m-e-l?

A. I believe that's the way it is spelled. There is two of them out there and they spell their names differently.

20 Q. Who was George P. Rummel?

A. He was the local griever of this local here.

21 Q. The local chapter of your Union?

A. That is right.

22 Q. When did you first discuss this with him?

A. I believe it was the next day I discussed it with him. And Mr. Parr, the trainmaster, asked me if I was able to work a work train which wouldn't customarily have any-[fol. 668] thing but just flagging on it. And I called Mr. Rummel and asked him about that. And he asked me, "Are you able to climb up on a car?" And I said, "Not with this hand the way it is." And he said, "Mark off."

23 Q. When did you next have an occasion to talk to Mr. Rummel?

A. That was after I had worked five days again and my hand began to hurt me worse than it had. So I called him again and asked him what to do about it.

24 Q. What was the conversation that took place then? A. Well, that is when he told me to mark off and see what they could do about it. And that is when they put me in a cast after that.

25 Q. When did you next have an occasion to discuss this with Mr. Rummel?

A. Let's see. I called Mr. Rummel again, I believe I had been in that cast—I had been in my second cast and it had been taken out of my second cast and that is when Dr. White sent me to see Dr. Brady. And Dr. Brady said he had found in the other X rays that a hairline fracture has shown up that hadn't shown up before. That is when I called Mr. Rummel.

26 Q. About when would that have been?

[fol. 669] A. I couldn't tell you the date. I know I had the cast on, both casts, approximately three weeks or more. And I had two of them off and had the second one taken off and Dr. Brady found the hairline fracture.

27 Q. To the best of your memory, about when was this conversation that you had with Mr. Rummel after the discovery that you had a fracture in your hand?

A. Approximately it would be—it must have been the latter part of August or September, the best I can remember now. It must have been.

28 Q. After your discovery of the fracture, when did you next discuss this with Mr. Rummel?

A. I called him right after that, after I had been put in the third cast. Dr. Brady put me in the third cast.

29 Q. Were you then off from work?

A. Yes, I was off from work all that time.

30 Q. Did you ever discuss this with Mr. Rummel out in your home?

A. Later on. That was over the phone that day.

31 Q. How much later on?

A. I think he showed up approximately maybe a week later, ten days or something like that. He told me he had been over to see me.

[fol. 670] 32 Q. Was he alone when he came at that time?

A. No. That is when he brought Mr. Crago with him.

33 Q. Do you know what Mr. Crago's first name is?

A. I believe it is Bob, Robert. They call him Robert. They introduced him as Bob Crago, though.

34 Q. Would you recite whatever conversation took place at that particular time? Now this is at your home.

A. This is at my home, yes.

35 Q. Fix the time as near as you can from the date of your injury.

A. Well, it would be some time in September, I believe.

36 Q. All right. Now state just what happened and what was said.

A. Well, Mr. Rummel introduced me to Mr. Crago.

Mr. Harrington: I am objecting to this. First, let's find out who was present at the time.

37 Q. At the time this conversation took place, who was there?

A. Mr. Rummel, Mr. Crago, and my wife and myself were the only ones.

38 Q. State what the conversation was that took place.

A. He introduced me to Mr. Crago and he asked me about the nature of my injury and what had been done for it.

[fol. 671] 39 Q. When you say "he" whom do you mean?

A. Mr. Crago asked me the nature of it, how it was working and how it was getting along. And I told him that it wasn't getting along too good; that I had these three casts

on it and still was unable to use it too good. And so he—that's when he recited to me a case where that—well, then he asked me if the railroad was taking care of me. And I said they had been giving me checks every month or whenever I went down and had to have them, they give me checks. And he said that Mr.—he didn't specify Mr. Harrington—I started to say that, I don't believe he did. I think he said the Legal Aid could do the same thing for me if I needed funds. And I told him I wasn't too interested in the money, that I wanted what money was coming to me, but what was bothering me was would I ever use my hand again. And he said, "The Legal Aid will furnish medical treatment the same as the Pennsylvania Railroad is." And he cited me a case where a brakeman, I believe, at Terre Haute had a back injury and went ahead and settled with the Pennsylvania Railroad, and later on he fell off of a car, or something, and that old injury reoccurred and caused him a lot of misery. And he said that the hand would do [fol. 672] the same thing. He said, "They will see to it that it is well and your medical will be taken care of."

40 Q. When he said they would see to it, whom did he indicate?

A. The Legal Aid. He said they have staffs of doctors up there that I would go see.

41 Q. Did he explain to you who and what the Legal Aid is?

A. He didn't go into any details, but I had a rough idea of what it was, yes.

42 Q. What was your idea of what it was?

A. Well, I figured it was Legal Aid set aside for the Brotherhood, BRT. I presumed that they had them to take cases like this.

43 Q. When you say ". . . them to take cases like this," whom do you mean?

A. Legal Aid. I didn't know too much about it until I got up there and talked to Mr. Harrington and the rest of them who said what it was.

44 Q. When did you next have an occasion to talk to Mr. Crago about this matter?

A. The best of my memory is that is the last time I talked to Mr. Crago. I tried to reach him two or three

times by telephone after I had talked to Mr. Harrington [fol. 673] and had been up there. I never did reach him again. To the best of my knowledge, that was the last time I ever talked to Mr. Crago.

45 Q. To keep the statement in logical sequence, try to recall these things in their accurate order.

A. All right.

46 Q. Tell us what you did with reference to this injury after this visit from Mr. Crago and Mr. Rummel.

A. Well, after they came there and talked to me, I talked to the wife and made up my mind it was all right.

47 Q. What was all right?

A. I thought we should sign up with the Legal Aid because I was worried about my hand.

48 Q. Was that the purpose of the visit?

A. That was the purpose of the visit. I told Mr. Crago then, and I told everybody else, that's what my main concern was, was the hand, and I had been promised medical aid.

49 Q. When Mr. Crago and Mr. Rummel came out to talk to you, did they state the purpose of their visit?

Mr. Harrington: I am objecting to the leading questions, Counsel. If you want to go into all the conversations, well and good, but the leading questions I am objecting to.

[fol. 674] 50 Q. Just state what the conversation was that you have referred to previously upon the occasion that Mr. Crago and Mr. Rummel visited you and your wife in your home.

A. Well, haven't I stated that? To the best of my knowledge, he told me what the advantages was of the Legal Aid and that the hand would be taken care of. And I agreed to go up and see the Legal Aid. Ten days later when we went up and seen them—

51 Q. Where did you go to?

A. To Chicago.

52 Q. Who suggested that you go to Chicago?

A. Mr. Crago.

53 Q. Did you, in fact, go to Chicago about ten days after that?

A. About ten days later. I think it was ten days right on the nose. Yes, me and Rummel and Mr. McCamman went to Chicago.

54 Q. State how you got there.

A. I went with Mr. Rummel and Mr. McCamman. We went down to the Union Station. They both rode a pass. I didn't have a pass and Mr. Rummel paid my way.

[fol. 675] 55 Q. Where did you go upon your arrival?

A. We arrived there in Chicago and went to the Planters Hotel.

56 Q. On State Street. Did you register in there?

A. Mr. Rummel registered for all of us.

57 Q. Where—

A. I signed the register, but he took care of all the rest of it.

58 Q. Where did you go then after having signed in at the hotel?

A. It was late at night. We went around the corner and had a bite to eat and then went right back to the hotel and went to bed.

59 Q. What happened the following morning?

A. The following morning we got up early and went down to Legal Aid. I was introduced to Mr. Harrington.

60 Q. You referred to the Legal Aid. Where was that?

A. That was on State Street also. The address, offhand I wouldn't know what it was.

61 Q. Was the office to which you went designated and marked the Legal Aid?

A. No, it wasn't.

62 Q. What office did you go to?

[fol. 676] A. I can't think of what it was just exactly.

63 Q. How did you come to go to whatever office you went to?

A. Well, Mr. Rummel took me there.

64 Q. Whom did you talk to there, if anyone?

A. Mr. Harrington.

65. Q. Recite briefly what that conversation was.

A. Mr. Harrington just explained to me just what the procedure was and that I would be taken down to his doctor there—Dr. Turner, I believe—in Chicago, and the hand would be checked and I would be checked over, and see what

we needed. And he explained to me what the terms of the settlement would be.

66 Q. Well, just state what he explained to you that the arrangement was.

A. Well, the arrangement was he would get the settlement for me when the proper time came and he thought it was ready and he would get 25 per cent.

67 Q. Was that agreement reduced to writing? Did you sign a contract?

A. I signed a contract, yes.

68 Q. Do you have a copy of it?

A. No, I don't.

69 Q. Did you have at that time?

[fol. 677] A. No, I didn't.

70 Q. You referred to some doctor. Did you have an occasion upon the occasion of your first visit there in Chicago with Mr. Harrington to see a doctor?

A. He sent us out that day. After he had talked to us, we went and seen this doctor at the clinic—Dr. Turner's clinic.

71 Q. Was that the doctor that Mr. Harrington directed you to?

A. Yes. Mr. Rummel took us there in a cab.

72 Q. How many doctors examined you there?

A. I believe there was three that interviewed me and examined me there that day, the best I can remember, three different ones.

73 Q. Do you know the name of any other than Dr. Turner?

A. Dr. Turner didn't see me. They were Oriental doctors, the best I can remember. Dr. Turner didn't see me.

74 Q. What did you do after having been examined by these doctors?

A. Mr. Rummel picked Mr. McCamman and I up that afternoon and he had already checked us out of the hotel, I believe he said, and had our baggage at the station. And we went back and caught the Riley and come back on the Riley that night.

[fol. 678] 75 Q. Did you pay for any of your accommodations in connection with this trip to Chicago?

A. No.

76 Q. What was your next connection with Mr. Harrington with reference to this matter?

A. I went back later after that again. I can't remember when it was, the date or anything like that. But I made another visit up there. I went through Dr. Turner's clinic again up there and was checked.

77 Q. When was that?

A. Oh, it was approximately three months after that, the best I can remember. I don't know exactly when it was, but it was some time after that that he asked me to come back up.

78 Q. Who is "he"?

A. I got ahold of the griever here and he called Mr. Harrington, I believe, and he asked us to come back up. I think Mr. McCamman was supposed to have another physical up there and he asked us both to come back.

79 Q. Who is Mr. McCamman?

A. He is a fellow that went with us.

80 Q. Another trainman?

A. I believe you will find his name in the statement there. [fol. 679] He went along with us. He was injured also.

81 Q. State just what took place on the occasion of this second visit you have referred to.

A. Well, I am trying to think if this was Mr. Rummel or —see, he was killed around there some time, and I don't think—I believe the next time we went back there, George Agei took us back there.

82 Q. Will you spell that last name for us, please?

A. I believe it is A-g-e-l. I believe it is.

83 Q. Mr. George Agel had taken over after Mr. Rummel was deceased?

A. Yes. And he drove us up in his car this time.

84 Q. Did you go to Mr. Harrington's office again?

A. Yes. After checking into the hotel there, we went the next morning and went through just practically the same procedure.

85 Q. The same as you related having taken place previously?

A. Practically the same, all except some of the stuff—I mean, he didn't explain about the settlement this time.

Mr. Harrington wanted to know how my hand was coming along.

86 Q. After this first visit and before the second, had you received the advance of any monies from any source? [fol. 680] A. After the first visit and before the second I had gotten money from Mr. Harrington.

87 Q. How much money?

A. I couldn't tell you that. I did have it wrote down at home, but I can't tell you now. But it was sufficient of what I had asked for. Mr. Crago told me I would get the same thing, and I did.

88 Q. What was the "same thing", a certain amount of money?

A. I believe the first time—I can't remember exactly, but it must have been $200. That was what I needed. That's what the railroad had advanced me.

89 Q. Well, just what happened next with reference to your settlement of this injury?

A. Well, that's the way it went on. I stayed at home and I think after I had set it out for awhile, I called Mr. Harrington. About Christmas time I called Mr. Harrington and told him I needed some money. And he wired me some money just before Christmas. I don't think that was $200. The best I can remember, maybe it was a hundred or—I couldn't tell you. It was a hundred or a hundred and fifty, maybe, he wired me to get it here in time for Christmas.

90 Q. That would have been Christmas of the year 1959? [fol. 681] A. Yes.

91 Q. What happened next with reference to your settlement of this injury?

A. Well, after that, I believe, is when I called Mr. Carrico then who was the next local griever. He was elected next as the next local griever. And I told him the hand wasn't getting any better and asked would he call Mr. Harrington for me and tell him—let's settle the case, I want my money. And he called Mr. Harrington and told him those very words, I believe. So Mr. Harrington gave us a date to come up and talk to him. And it wasn't too long after that, approximately ten days or something like that, he set the date and Mr. Carrico and I drove up in his car.

92 Q. Who set that date?

A. Mr. Harrington did. He told us when it would be convenient for him. I don't know when it was, but it wasn't too long after I called, very shortly.

93 Q. This is, then, the third trip that you made to Chicago?

A. This was the third trip.

94 Q. Would you tell us what occurred on the occasion of this visit?

A. This was the same thing. We checked in at the Plant- [fol. 682] ers Hotel and went and see Mr. Harrington the next morning, talked the case over, and he told me what we could get. And he asked me how the hand was, and I told him that it wasn't getting any better. And he said the only thing that his doctor told him was that they could make an exploratory operation on the hand, that that was the only thing they could do. And he asked me if I wanted to settle. And I said that I had come up there to make up my mind. He asked me if I was sure that's what I wanted. And I told him, "Yes." He called the man up there in Chicago—I presume the head claim agent—and he came over and gave me a check. And that was it.

95 Q. Was that the same day?

A. That was the same day.

96 Q. Had you received any correspondence or letters from Mr. Harrington in connection with any of the advances of money that he made to you during the pendency of this case?

A. I had a letter or two from him, I don't know exactly what it was about now, but at one time he told me, before I wrote and asked him for money, to write and ask him for the money. Well, he told me that after I left his office [fol. 683] the first time. He told me to write and tell him what I needed. And outside of that he sent me a report that the doctors give him once. And I told him to break it down in my terms where I could read and understand it. And he did that and wrote and told me what they found about my hand.

(Complainant's Exhibit No. 1 was marked for identification by the Reporter.)

97 Q. I will hand you what has been marked for identification as Complainant's Exhibit 1 and ask you to examine it and state for the record what it is.

A. This is one of the letters that Mr. Harrington sent me after I had wrote him and asked him for a loan.

(Complainant's Exhibit No. 2 was marked for identification by the Reporter.)

98 Q. I will now hand you Complainant's Exhibit No. 2 and ask you to examine it and state for the record what it is, if you know.

Mr. Harrington: This is for identification?

Mr. Sharp: For identification purposes only.

[fol. 684] A. I don't understand what you mean, sir.

(At this time a brief discussion occurred off the record.)

A. (continuing) Well, this is the envelope that was mailed to me with a letter in it from Mr. Harrington.

99 Q. Is Exhibit 2 the envelope in which you received Exhibit 1?

A. Yes.

Mr. Sharp: Let the record now show the request that Complainant's Exhibits 1 and 2 be made a part of the record herein.

Mr. Harrington: We object to them being entered into the record on the grounds that the fact that the firm of Henslee & Henslee loans money to a client is not in issue in a case pending in Virginia. On that basis, I am objecting.

(Complainant's Exhibit No. 3 was marked for identification by the Reporter.)

100 Q. I will now hand you what has been marked for purposes of identification Complainant's Exhibit 3 and ask you to examine it and state for the record what it is, if [fol. 685] you know.

A. This is the breakdown that they give me in Chicago, Mr. Harrington and this claim agent, showing what my settlement was. And the railroad loan had been taken out, the railroad retirement that I had received and in loans

that I had received from Henslee & Henslee and the fee and the balance of what I received.

101 Q. Was this exhibit given to you at the time of your settlement by Mr. Harrington?

A. Yes, that's the breakdown on it. That's my total check.

102 Q. And this exhibit, then, accurately reflects the terms and breakdown of that settlement that you made at that time?

A. That is right.

Mr. Sharp: At this time let the record show the request that Claimant's Exhibit No. 3 be attached hereto and made a part thereof in this record.

Mr. Harrington: No objections.

103 Q. Did the making of this settlement, then, conclude the matters that took place between you and Mr. Harrington?

A. That ended it.

104 Q. This injury that we have been discussing here [fol. 686] today, then, took place something a little over two years ago, is that correct?

A. Yes, sir.

105 Q. On or about March 23, 1961, did you have an occasion to make a written statement in connection with the facts of your injury and the retaining of Mr. Harrington and his law firm and the settlement of this lawsuit?

A. Is that the statement of Mr. Scanlan, I believe?

106 Q. Yes.

A. Yes.

107 Q. Again, this was made on or about March 23, 1961?

A. Yes.

(Complainant's Exhibit No. 4 was marked for identification by the Reporter.)

108 Q. I will now hand you what has been marked for identification purposes as Complainant's Exhibit No. 4 and ask you to examine it and state for the record what it is, if you know.

A. This is a statement that I have Mr. Scanlan at my home.

109 Q. Is this your signature on that statement in the middle of Page 10?

A. Yes, that is my signature.

[fol. 687] 110 Q. Was this statement taken in your home?

A. In my home, yes, sir.

111 Q. Who was present at the time it was taken?

A. Mr. Scanlan, my wife and myself.

112 Q. Who is Mr. Scanlan, if you know?

A. Well, he is with the American Association of Railroads. That's all I know. I don't know what his title is or anything.

Mr. Sharp: At this time the Complainant requests that its Exhibit 4 be attached to this deposition and be made a part thereof.

Mr. Harrington: I would like to see it.

I object to this being made a part of the record on the grounds that the gentleman who took the statement is not here, is not here to identify the statement nor is he here to introduce the statement into the record and subject to cross examination and that the statement is self-serving.

(Complainant's Exhibits Nos. 4-A and 4-B were marked for identification by the Reporter.)

113 Q. Now I will hand you what has been marked further for identification purposes Complainant's Exhibits 4-A [fol. 688] and 4-B and just ask you to state for the record what they are.

A. These are the photostats of the statement that I made at my home before Mr. Scanlan.

114 Q. Will you examine them and state whether they are true and accurate reproductions of Complainant's Exhibit 4 which you have identified as your statement?

A. Yes, they are accurate.

Mr. Sharp: Complainant now requests leave to substitute its Exhibits 4-A and 4-B for its Exhibit 4, being the original thereof, for the purpose of making it available for return to the maker.

115 Q. Had you ever met Mr. Harrington prior to the time that you were directed to his office by Mr. Crago and Mr. Rummel?

A. No. That was the first time I had ever met Mr. Harrington.

Mr. Harrington: I object to counsel's questions on the grounds that he is leading the witness, and to the words "directed by Mr. Crago and Mr. Rummel".

116 Q. Well, how did you come to select Mr. Harrington [fol. 689] as your attorney to represent you with reference to this injury?

A. Mr. Crago and Mr. Rummel directed me to Henslee & Henslee of which Mr. Harrington, he is one of the attorneys in that firm. But Mr. Crago was the one. He said, "You might have Mr. Harrington. I believe you will like him." I believe those are the words he used. He said, "I believe you will like Mr. Harrington. You might get him up there. I don't know." But the law firm was Henslee & Henslee.

117 Q. In the matter of your retaining counsel, was that the gist of the discussion held upon the occasion that you have recited into the record wherein Mr. Crago and Mr. Rummel first came to your home?

Mr. Harrington: I object to the question as it is leading and suggestive. I further object because of the fact that Mr. Troxtell has already testified as to the conversation had at his home between Mr. Crago and Mr. Rummel and himself.

118 Q. Now will you answer the question? If you don't understand it, he will repeat it to you.

A. I didn't understand it thoroughly, no.

(Question No. 117 was read to the witness by the Reporter.)

[fol. 690] A. They just suggested Legal Aid.

Mr. Harrington: I am objecting to any conversations with Mr. George Rummel on the basis that he is now deceased and he no longer can rebut same.

119 Q. You mentioned several times in the earlier part of your recitation of the facts under discussion that after

your injury you called Mr. Rummel on several occasions and that he was a griever of your Union. What is a griever?

A. I suppose he is the same as what they call a union steward, the best I can tell you. He is the local chairman is actually what it is, local chairman. He hears all the aches and pains and he is the griever. He is the local chairman. I suppose that's what his office would be.

120 Q. What was the purpose in your calling him on these occasions?

A. Well, that was who I was supposed to call, I mean to find out what to do and what not to do—different things like that.

121 Q. Did you follow his recommendation?

A. The best I could, yes, I followed his recommendation. He told me not to work, and I didn't. He told me to try [fol. 691] it, and I did. I generally went along with him.

122 Q. And he told you to go to Chicago and you likewise did that?

Mr. Harrington: I object to that, Counsel.

123 Q. You called for his advice and counsel with reference to this, right?

A. Right.

Mr. Sharp: No further questions.

Cross examination.

Questions by Mr. Robert E. Harrington:

124 Q. Mr. Troxtell, the day of your accident was June 13, 1959, is that correct?

A. Yes, that is right.

125 Q. When did you return to work? In other words, when did you finally return to work and work regularly, approximately?

A. Approximately I marked back up on the board and worked two nights before we settled with the company.

126 Q. During the time and the date of the settlement —do you recall the date of the settlement?

A. No, I don't. I can't recall the date.

[fol. 692] 127 Q. Would it be approximately April 28, 1960?

A. I believe so.

128 Q. During that time from June 13, 1959 to April 28, 1960, were you on furlough during any of that period of time, sir?

A. Yes. I was furloughed approximately about 15 days after I was injured. I believe I was furloughed.

129 Q. So you were on furlough for how many months approximately, if you can recall?

A. Well, let me see. It was close to six months, I believe, the best I can remember.

130 Q. When you are on furlough, that means there was not sufficient work for you to be able to work even if you were physically able, is that correct?

A. That is right.

131 Q. So that whether you had an injury or not, you would not have been able to work on the railroad?

A. No, I couldn't have been working on the railroad because I was furloughed.

132 Q. You came to my office on November 13, 1959. Is that approximately right?

A. Yes.

133 Q. I sent you to Dr. Turner's office for an examina-[fol. 693] tion, is that correct?

A. That is right.

134 Q. And some time after that examination did you receive a report from me as to the doctor's findings?

A. Yes, I did.

135 Q. On the first visit to my office, I explained to you that we would advance you some money if you needed it for living expenses, is that correct?

A. You did.

136 Q. And that is what I did, is that correct?

A. You did that.

137 Q. Or I should say the firm of Henslee & Henslee.

A. That's where the checks were made out.

138 Q. Prior to coming to our office you had obtained money from the railroad for the same purpose, is that correct?

A. That is right.

139 Q. Do you recall the amount that you had borrowed from the railroad?

A. Total you mean?

140 Q. Total.

A. Twelve hundred dollars.

141 Q. That was prior to coming to Chicago to see me?

A. Prior to seeing you.

[fol. 694] 142 Q. In December of 1959, approximately one month after you hired the firm of Henslee & Henslee as your attorneys, did you contact me and request that I make a settlement or attempt to make a settlement at that time?

A. That was before Christmas, I believe.

143 Q. Yes.

A. Yes, sir.

144 Q. Is it not a fact that I advised you at that time that I thought it was premature to make a settlement?

A. You told me it was a little too early, yes.

145 Q. Can you tell me approximately how many times you saw our doctors?

A. I made—well, two that I know of, two trips, I believe.

146 Q. And at the time that you came in and settled your case, is it not a fact that I advised you if you were still having trouble with your hand that you should follow our doctor's advice and have an exploratory operation?

A. You did that.

147 Q. And is it also not a fact that you asked me to settle your case at that time and, as a matter of fact, at the time you came into the office I had an offer already?

A. You told me that that morning, yes.

148 Q. Did you settle the case of your own free will, sir?

[fol. 695] A. That is right.

149 Q. In the settling of the case, was the case settlement pursuant to the contract that you had signed?

A. Yes.

150 Q. And on the basis of 25 per cent of the total settlement?

A. That is right.

151 Q. With deductions being made for what you had borrowed for living expenses from the railroad and from the firm of Henslee & Henslee?

A. That is right.

152 Q. And also what you had received from the Railroad Retirement Board under the Crosser Act?

A. Yes.

153 Q. At the time that Mr. Rummel advised you to mark off at work, you had also advised him that you could not climb a car?

A. That is right.

154 Q. And in climbing cars, is that necessary in your work as a railroad brakeman?

A. It definitely is, yes, sir.

155 Q. Had the railroad released you for work at that time, sir?

A. You mean after I was injured?

[fol. 696] 156 Q. Yes, sir.

A. And worked that few days?

157 Q. Yes, sir.

A. The doctor said that he thought I could go back to work. They couldn't find a break or anything and I asked about marking back up.

158 Q. And you went out and tried it?

A. And Mr. Rummel said, "Give it a try and see how it comes out."

159 Q. Then it was some time after that that they found the break?

A. I worked five days after that and it got so painful, I had to take off. They found the break after the second cast was taken off.

160 Q. You did not have a cast on your hand at the time that the doctor told you to try to work, did you?

A. No. There never had been a cast on it yet, just rubber around it.

(Defendants' Exhibit No. 1 was marked for identification by the Reporter.)

161 Q. Mr. Troxtell, I show you what has been marked Defendants' Exhibit 1 for identification and ask you if your [fol. 697] signature is on that instrument?

A. Yes, that's my signature on it.

162 Q. What is that instrument, Mr. Troxtell?

A. I don't fully understand it. You explained it to me

at the time. I remember it well, but I don't thoroughly understand it.

163 Q. Have you read this instrument?

A. Yes, I read it then, yes. You explained it to me up there.

164 Q. To refresh your recollection, Mr. Troxtell, you testified here that you came to Chicago approximately November 13?

A. Yes.

165 Q. And did you prior to November 13 send a letter to the Department of Legal Counsel in Cleveland requesting the Brotherhood of Railroad Trainmen to represent you?

A. Did I send the letter?

166 Q. Yes.

A. I will have to have a little time to think on that. That is something that has just completely slipped my mind, whether I did or whether I didn't. It's real hazy, but I did send a letter. I believe I did. There was a form or something, or I filled out a form or sent a letter.

167 Q. Defendants' Exhibit 1 for identification bears [fol. 698] your signature, is that correct?

A. Yes, that is right.

Mr. Harrington: I offer this into evidence as Defendants' Exhibit 1.

Mr. Sharp: The Complainant would like to ask some preliminary questions with reference to it.

Preliminary questions by Mr. William T. Sharp:

168 Q. In answer to Mr. Harrington's question about the exhibit, you stated that he, Mr. Harrington, went over it with you and explained it to you, is that correct?

A. At the time, he explained to me what this form was, what it was for and everything.

169 Q. Will you just recite in the record what that explanation was?

A. Well, that's what I say now that I actually don't understand it. At the time, I did. But it was for the BRT, the best I can remember now, to make an investigation of my accident at the Hawthorne Yards. And the best of my

knowledge, I believe I was told to write a letter to them requesting that.

170 Q. Who told you to do that?

A. Mr. Harrington did, I believe. To the best of my [fol. 699] knowledge, that is right.

171 Q. Do you know how to use a typewriter?

A. No, I don't.

172 Q. Did you type that letter up?

A. This letter here?

173 Q. Yes.

A. No, I didn't type this.

174 Q. Do you know who did?

A. I haven't the slightest idea who typed it.

175 Q. Did you ever see it prior to the time that you have referred to Mr. Harrington having explained it to you?

A. I signed this; that I know.

176 Q. When and where?

Mr. Harrington: If you know.

177 Q. (continuing) Yes, if you know.

A. Well, now, just to be honest, I don't know. I know the occasion. I don't know where it was at. Whether it was in my home and whether somebody brought it there, that I can't remember. That's the truth. I can't.

Mr. Sharp: The Complainant would object to it becoming part of this record: (1) on the grounds as not having been identified and (2) on the grounds that it is self-serving [fol. 700] for the defendant under the issues here enjoined, and (3) that it would have no probative value under the issues here enjoined.

Mr. Harrington: I will ask that Defendants' Exhibit 1 be introduced into the record and the word "identification" be stricken from the exhibit and leave to substitute photostatic copies of said instrument in lieu of the original.

Mr. Sharp: Objections for the reasons stated.

Mr. Harrington: I submit herewith photostatic copies and move they be made a part of the record and attached to the original and copies of this deposition.

Cross examination, resumed.

Questions by Mr. Robert E. Harrington:

178 Q. Mr. Troxtell, this instrument that you identified having your signature thereon was dated November 12, 1959, is that correct?

A. That is right.

179 Q. If you came to Chicago on November 13, 1959, you had not seen me until you came to Chicago, had you, sir?

A. Definitely not.

180 Q. Would that refresh your recollection as to whether [fol. 701] or not I gave you that statement or that letter?

A. This letter here?

181 Q. Yes.

A. The best of my knowledge, you didn't. But I don't remember where I signed it. But you didn't give it to me is the best I can remember.

182 Q. Thank you, sir. When you came to Chicago, did the firm of Henslee & Henslee—well, first, your intentions were to hire us as your attorneys in the handling of this case, is that right?

A. That is right.

183 Q. I believe you testified that you were on furlough during some of the months that you were off of work during the pendency of this claim, is that right?

A. That is right.

184 Q. And you testified what you meant by the word "furlough", that there was no work?

A. No work available.

185 Q. You were the first person to contact Mr. Rummel concerning your accident so far as you know, is that correct, sir?

A. That is right.

186 Q. And when you contacted him you sought advice from him as your local chairman?

[fol. 702] A. That is right.

187 Q. And Mr. Crago who visited you with Mr. Rummel, he was also from the legal counsel's office; in other words, he was an investigator, is that correct?

A. I believe so.

188 Q. And he advised you under the Federal Employees' Liability Act?

A. Yes.

189 Q. And after his visit, you discussed that with your wife?

A. Yes.

190 Q. And that is when you decided you would come to Chicago, is that correct?

A. That is right.

191 Q. You further testified on direct examination that a Mr. Scanlan from the American Association of Railroads came to your house?

A. That is right.

192 Q. And that was approximately March 23, 1961?

A. That is right.

193 Q. Did Mr. Scanlan show you any credentials, sir?

A. Other than his card that he gave me, that he left.

194 Q. He left a card with you?

A. Yes, with his name on it and address.

[fol. 703] 195 Q. Did it show where he was from?

A. It said American Association of Railroads, I believe, the best I can remember.

196 Q. Did he tell you who sent him to see you?

A. Who sent him?

197 Q. Yes, sir.

A. He didn't specify it, I don't believe. He said, "I am here to see if I can get a statement," is what he said.

198 Q. Did he tell you the purpose of his taking the statement, sir?

A. Yes, I believe he did.

199 Q. What did he tell you?

A. I believe he said it was something to do with chasers, —ambulance chasers, as he put it—it was to put them out of business, I believe he said.

200 Q. Did he take this statement that has been marked Complainant's Exhibit 4?

A. Yes. He took it down in my home there.

201 Q. Did you write this statement out in longhand, or did he?

A. He wrote it out.

202 Q. I notice, Mr. Troxtell, that you have in your hand a card. Is that the card that you referred to that Mr. Scanlan left?

[fol. 704] A. That's the one he left. That's a receipt on the back for one of these exhibits, I believe, and that breakdown there that he wanted to borrow. I think it is a receipt to show that he has it.

203 Q. Was the breakdown sheet of the settlement in the letter from the firm of Henslee & Henslee ever returned to you, sir?

A. No, it never was.

Mr. Harrington: I will ask leave to have this marked for identification as Defendants' Exhibit No. 2.

(Defendants' Exhibit No. 2 was marked for identification by the Reporter.)

204 Q. I show you what has been marked for identification Defendants' Exhibit No. 2 and ask you if this is the card that you speak of?

A. Yes, this is the card that Mr. Scanlan left at my home.

Mr. Harrington: I will now offer it into evidence as Defendants' Exhibit No. 2.

Mr. Sharp: No objections.

205 Q. You testified, I believe, that Mr. Scanlan wrote [fol. 705] out this statement, is that correct, sir?

A. That is right.

206 Q. Consisting of approximately ten pages?

A. Ten pages.

207 Q. How long did it take Mr. Scanlan to write out this statement, if you recall, approximately?

A. I think I can tell you exactly. I think it took two hours and 15 minutes.

208 Q. This was in your home?

A. That is right.

209 Q. Your wife was present?

A. Yes.

210 Q. Was it during the day or nighttime?

A. It was during the day.

211 Q. Did he reimburse you for your time?

A. No.

212 Q. Did he at any time offer you anything for giving the statement?

A. Nothing.

213 Q. Were you given a subpoena to appear here to testify in this deposition?

A. So far as I know, I wasn't, unless that was what I read the other day that you brought to the house. If that [fol. 706] was a subpoena, that was it. But so far as I know, I wasn't subpoenaed, no.

214 Q. Did you read the paper that you refer to?

A. Yes, I read it.

215 Q. Do you recall what that paper said, sir?

A. It just told the time that the wife and I was to appear down here for the purpose of the State of Virginia and so forth.

216 Q. Has anyone agreed to reimburse you for your loss of time today, sir?

A. I haven't been approached.

217 Q. Did you have to mark off from work to appear here?

A. No.

218 Q. Are you working at the present time?

A. Yes.

219 Q. For whom?

A. Pennsylvania Railroad.

220 Q. Are you on the extra board?

A. Regular job.

221 Q. What are your hours of work?

A. It's all the third trick, 12 o'clock at night until 7:00 in the morning.

222 Q. So you worked until 7 o'clock this morning?

[fol. 707] A. No. I was off Tuesday and Wednesday. I go to work tonight.

223 Q. Those are your regular days off?

A. Yes.

224 Q. Do you expect to be reimbursed for your time and expense for attending this deposition?

Mr. Sharp: Let the record show an objection on the ground that his expectation is of no probative value here nor would his expectation in any way alter the truth or accuracy of the matter herein under discussion.

225 Q. You may answer, Mr. Troxtell.

A. Answer the question?

226 Q. Yes, sir.

A. No, I don't expect it.

227 Q. No one has indicated that you will be reimbursed for your lost time or your expenses?

A. No.

228 Q. And no one has indicated that you would be reimbursed for your lost time in connection with the statement that Mr. Scanlan took?

A. No.

[fol. 708] 229 Q. Did you only see Mr. Scanlan on the one occasion?

A. Twice. He came back again after that.

230 Q. When did he come back again the second time?

A. Oh, it was approximately, maybe three weeks to a month, maybe. I don't know exactly when it was.

231 Q. From this date?

A. From the day I made this statement, he came back again.

232 Q. What was the purpose of that trip?

Mr. Sharp: Show an objection on the ground that whatever subsequent visits or the purposes thereof that Mr. Scanlan might have made, would not in any way tend to prove or disprove any of the material facts joined by the issues herein.

233 Q. You may answer the question. What was the purpose of his visit?

Mr. Sharp: If you know.

A. The purpose of it was to re-initial something in the statement. And he asked me if I would make a deposition for the State of Virginia.

234 Q. By "re-initial" what do you mean, sir?

A. There was something in the statement that had been— [fol. 709] where he had put it down differently or some-

thing. It didn't mean the same thing. You might find it in there, I don't know.

235 Q. Will you look through the statement and see if you can find it for me?

A. But I re-initialed it that day. It was just a little bobble of some kind, to the best of my knowledge, that I re-initialed.

236 Q. Would the original help you better than the photostat?

A. No, I believe that I can find it. The only place I can find that I re-initialed—see, at the time he explained to me what it was. Just now I can't tell you just why it was re-initialed unless it was a misspelling, or what the purpose was.

237 Q. You are referring to Page 4 of the statement, the fourth line from the bottom, is that correct?

A. That is right.

238 Q. Can you read that line?

A. If I recall correctly McCamman—and he has had rode on a pass which has been, I re-initialed that. That's the only one that I can find.

239 Q. I show you Page 8 of this statement and ask you if you made any corrections on that page at that time, sir? [fol. 710] A. Yes. Here is a correction here re-initialed.

240 Q. Do you know what correction was made, sir?

A. We returned to Indianapolis at—

241 Q. You can't read it?

A. I can't read what it has been.

242 Q. I show you the bottom line on Page 8, sir. Was that correction made at that time?

A. I know nothing about that one there.

243 Q. In other words, you never saw that correction made there?

A. I never initialed that, no.

244 Q. At the time that you signed the statement, did you see these figures on this instrument?

A. Some of this is very difficult to read. But this is it.

245 Q. That is a correction that has been made that you did not know of, is that correct?

A. I did not initial that, no.

Mr. Harrington: I now make a further objection to the statement that has been offered in regard to Complainant's Exhibit No. 4, objecting to it being admitted into evidence on the grounds that there are corrections on the face of the instrument which the witness has testified he has not made said corrections and did not know of same, and ask that [fol. 711] the entire statement be stricken from the record.

246 Q. On this second visit from Mr. Scanlan, you stated that he asked you if you would appear for a deposition, is that correct?

A. For the State of Virginia, yes.

247 Q. And you agreed to do it at that time?

A. Yes. He asked me if I knew what a deposition was, what it actually meant. And he said that it was making this statement under oath.

248 Q. And you agreed to do that, sir?

A. Yes.

249 Q. At that time he did not tell you that you would be reimbursed for your time?

A. The best I remember, he didn't say anything to me about any payment or anything. I didn't expect it, as I said.

250 Q. When Mr. Scanlan took this statement on March 23, 1961 were these your exact words, or were these the words that he wrote down, or can you tell us how you gave the statement?

A. To the best of my knowledge, I tried to tell it from the day I was injured until the day I settled. To the best of my knowledge, he asked some of the exact words that certain people said and I tried to recall them. That's the [fol. 712] best of my knowledge what happened.

251 Q. He more or less led you through the statement, is that correct?

A. Yes.

252 Q. As to how he wanted it down?

A. Yes, with questions just like now.

253 Q. Do you have a family, Mr. Troxtell?

A. I have a wife and a stepdaughter.

254 Q. And the money that you borrowed from the railroad and also from the firm of Henslee & Henslee was

toward your support and your family's support while you were off of work?

A. That is right.

255 Q. And if you had not received that financial assistance, what would you have done, sir?

A. That I don't know.

256 Q. Could you have maintained your home?

A. Not by working, I couldn't.

Mr. Harrington: I have no further questions.

Redirect examination.

By Mr. William T. Sharp:

257 Q. In the course of the cross examination and your answering questions asked you by Mr. Harrington, in re-
[fol. 713] ferring to the doctors who saw you in Chicago, his questions referred to them as "our doctors". Now did you testify that you had, prior to your trip to Chicago, been under the treatment of Doctors White and Brady of this city?

A. Yes.

258 Q. And the doctors, then, that you saw in Chicago, what was the purpose of your seeing them?

A. Well, I suppose it was for the medical aid for my hand? I had been examined. They examined my hand.

259 Q. For examination or aid?

A. Well, examination.

260 Q. They were not your doctors?

A. No.

261 Q. And at whose direction did you go to those doctors?

A. Why, Mr. Harrington is the one who sent me to Dr. Turner's clinic.

262 Q. With reference to Defendants' Exhibit 1, Mr. Harrington asked you specifically with reference to the date that is shown on it?

A. Yes.

263 Q. This date shown on the instrument being November 12. Do you have an independent recollection that the date that you signed it was in fact on November 12?

[fol. 714] A. No, I don't. All I know is that I did sign this. In whose presence I still don't know.

264 Q. Nor where?

A. Nor where. I still don't know.

265 Q. On cross examination Mr. Harrington asked you if when you came to Chicago the first time it was not your intention to retain his law firm, that being Henslee & Henslee, to represent you in your injury. And you answered, "Yes." Will you state for the record when you first conceived that intention to go to Chicago for the purpose of retaining Mr. Harrington's firm to represent you?

A. Well, that was in my home after Mr. Crago talked to me about their clinic up there and some of the doctors they had for my hand.

266 Q. Referring now to Complainant's Exhibit No. 4, on cross examination you indicated to Mr. Harrington that there were certain changes in that statement from the time you gave it until its condition as you presently examine it. Will you start from the beginning and read the statement into the record pointing out any part thereof that is at variance with the statement that you gave Mr. Scanlan?

[fol. 715] Mr. Harrington: I object to it being read into the record as it has been introduced over objections here. And if it is read, I object and request that it all be stricken from the record by the Court.

A. Now read it? Is this where I would initial it?

267 Q. A to Z.

A. Read the whole thing?

268 Q. Yes, pointing out any part of it that is not yours.

A. Indianapolis, Indiana. March 23, 1961.

My name is Lawrence E. Troxtell, age thirty-nine. I live with my wife and stepdaughter at 1209 Olive Street, Indianapolis, Indiana. I am employed as a brakeman by the Pennsylvania Railroad, Indianapolis, Indiana and am presently on furlough.

I sustained an injury to my left hand on June 13, 1959—

269 Q. Are you unable to read the word?

A. I can't read that word— . . . which I was off work for several months. During the period I was off work with the injury my hand was in a cast. I was treated medically so

the expense of the Pennsylvania Railroad who also during this period loaned me money on which to support my family. [fol. 716] When I was first injured I reported the injury to George P. Rummel, now deceased but who was then Griever of Local 261, Indianapolis, Brotherhood of Railroad Trainmen of which I am a member. Rummel instructed me to mark off duty which I did. Following the marking off doctors had a difficult time getting to the base of my injury. Finally the cause of the pain I had been suffering was found to be a hairline fracture at the base of my left thumb. The fracture was not found until some time in October or November 1959.

After finding the fracture I called George Rummel and reported the fracture and to let him know what progress I was making with the hand. The day I called Rummel he told me that it had been a long time before they found the trouble and that I was to sit tight as someone, meaning the Pennsylvania Railroad, was going to pay for that. As near as I can recall it was either late October or early November 1959 that I called Rummel relative to finding the fracture.

About ten days later Rummel and a man named Bob, Robert Crago, from the New York Central Railroad and Legal Aid of the Brotherhood of Railroad Trainmen came [fol. 717] to my home to see me. At that time I lived at 1228 Beecher Street, Indianapolis, Indiana. They called during the morning and during the first call Crago told me that the Legal Aid of the Brotherhood of Railroad Trainmen had attorneys in Chicago who would see that I got a fair deal in settling the claim I had against the railroad. Crago told me that the—I can't read that.

Mr. Harrington: Let the record so show.

270 Q. The word you cannot make out is on what page?

A. Page 3, line 5.

271 Q. The last word?

A. The last word on line 5 and the first word on line 6. . . . see to it that I received medical care in Chicago at no cost to me. Crago told me that, no doubt, an attorney named Bob Harrington would handle my case and that he was sure that I would like him.

I told Crago that I wasn't interested in—I can't make too much of this out here.

Mr. Harrington: Let the record show that he is unable to read line 14, Page 3, the words after "interested in".

[fol. 718] A. Yes. And the next three words the same line.

272 Q. Resume where you can make it out.

A. . . . the Pennsylvania Railroad was loaning me money and that I needed the loan to live on. Crago told me that the attorneys in Chicago would do the same thing for me and all I would have to do was call them when I needed money.

Rummel and Crago were at the house about two hours. Crago did the talking and explained how the Legal Aid worked—I can't make the next words out.

Mr. Harrington: Let the record show that the witness is unable to read the last two words in line 4 from the bottom of Page 3.

A. And the first word in line 3.

273 Q. Resume where you can make it out.

A. . . . I would be taken care of by the Chicago Legal Aid attorneys.

He explained it would cost me 25 per cent of—that word can't be made out.

Mr. Harrington: Let the record show the witness cannot read the word on Page 4, line 1, after the word "of".

[fol. 719] A. . . . settlement was made and how all my expenses in going to Chicago would be paid by the attorneys. I told Crago I would have to think it over and Crago told me that Rummel would be back to see me. About a week or so later, Rummel came back to see me. I agreed to go to Chicago with him just to talk to the Legal Aid attorneys.

About three days later I was picked up at my home by Rummel and we drove to the Union Station where we took a train on the Pennsylvania Railroad to Chicago. I did not have a pass and Rummel bought a ticket and paid for it out of his pocket, to Chicago. Before train time Rummel went out and picked up a Roy McGamman, a Penn-

sylvania employee, who had suffered a broken leg in a train injury. If I recall correctly McGamman rode—and there is a correction where I initialed it—on a pass.

We arrived in Chicago at night and my recollection is the date was November 9, 1959. Rummel took us in a taxi to the Planters Hotel. At the Planters Hotel the clerk on the desk gave me a card to sign on the top of which was the words Henslee & Henslee. It was a printed card. I signed the card but do not recall signing—and I can't make [fol. 720] out the next word.

Mr. Harrington: Let the record show that the witness is unable to read on Page 5, line 8, the first word.

A. . . . hotel registration card. I think my room was 217—and I can't read the next word.

Mr. Harrington: Let the record show the witness is unable to read line 9, the word after "217".

A. . . . I was alone in the room. Rummel and McGamman took a double room. So far as I know Henslee & Henslee paid the hotel bill, I didn't. I was there only the one night.

The following morning Rummel and McGamman met me in the lobby of the hotel and we went to the office of Henslee & Henslee. Rummel took me into Bob Harrington's office and introduced me to Harrington. Harrington questioned me about my injury, how it happened and so forth. I expect I talked to Harrington about an hour. Among other things, I mentioned to Mr. Harrington that Crago had told me I could receive loans from the attorneys and Harrington told me they did loan money to—and there is a correc- [fol. 721] tion there and I initialed it.

Mr. Harrington: What is the word?

The Witness: The word cannot be made out. It is marked out and re-initialed.

Mr. Harrington: Let the record so show.

A. . . . who needed money. Harrington also told me he would send me to a doctor who would examine me but that after I returned to Indianapolis I was to insist that the rail-

road doctors take care of the hand. I signed a contract retaining Henslee & Henslee for a fee of 25 per cent of whatever settlement was made with the railroad.

Rummel took both McCamman and me to see a Dr. Turner. I was given a complete physical but was not advised about my injury. I do not know the name of the doctors who examined me. They were Orientals. Three separate Oriental doctors seen me. On my next trip I met Dr. Turner.

I—that word can't be made out after I.

Mr. Harrington: Let the record show the witness is unable to read the second word in line 8 from the bottom of Page 6.

[fol. 722] A. . . . wasn't given a report by the doctors. I was told they would send the report to my attorney. McCamman went through the same process as I did in Dr. Turner's office. I was in the doctor's office about two hours.

Rummel then told McCamman and I—

Mr. Harrington: Let the record show the witness is unable to read the next to the last word from the bottom of Page 6.

274 Q. Wait a minute. Now are you unable to read anything?

A. No. I looked at it wrong. I can read it.

. . . the doctor's office about two hours.

Rummel then took McCamman and I to the Berghoff for dinner and following dinner to the Illinois Central Station where we caught the train to Indianapolis.

While we were in Dr. Turner's office Rummel checked —and there is a word marked out and re-initialed.

Mr. Harrington: Can you read the word?

The Witness: I can't read the word.

Mr. Harrington: Let the record so show.

A. . . . Rummel checked McCamman and me out of the Planters Hotel. On the train back to Indianapolis Rummel [fol. 723] talked to the conductor—no, talked the conductor into; the words "out of" being marked out and that has been re-initialed and put "into"—honoring the Pennsyl-

vania passes he and McCamman had and Rummel paid the conductor a cash fare for me.— That's the best I can do.— We rode in a car on the head end of the James Whitcomb Riley on which there were several other men dead-heading back to Indianapolis.

I again saw Harrington in Chicago in February 1960 when I went with my wife to Chicago. Mrs. Troxtell and I drove with George Agel, President of Local 261. Rummel had been killed in a train wreck near Cleveland, Ohio a few days prior to our trip to Chicago and Agel was taking over for Rummel. Harrington had called to tell me he wanted me in Chicago for another check-up by the doctors. Roy McCamman also went with us in Agel's car. We stayed at the Planters Hotel. Mrs. Troxtell and I were assigned to the same room I had had on my first trip. Again I signed the same type of Henslee & Henslee card at the hotel. I do not recall if I registered for Mrs. Troxtell or not.

The next day I saw Harrington and was sent to Dr. Turner. This time I saw Dr. Turner. He didn't give me any sort of treatment nor advise me what to do. We returned [fol. 724] to Indianapolis the—and "next" has been stricken out and written above it is "same", and I have initialed it.

We returned to Indianapolis the same day. Harrington complained to Agel because I had brought Mrs. Troxtell. Harrington—then I can't make out the next word.

Mr. Harrington: Let the record so show that the witness cannot read the first word of line 12 from the bottom of Page 8.

A. . . . it an unnecessary expense and I told Harrington that Crago had told me it was all right for me to take my wife. Henslee & Henslee ended up paying my wife's expenses. Agel took us back home.

After the second trip to Chicago I became impatient for settlement. I had been borrowing money from Henslee & Henslee. I had been getting—now I didn't initial this one place here. "Two fifty" has been stricken out.

Mr. Harrington: Let the record so show that the witness has testified that he did not initial the correction that was made on the bottom line of Page 8.

[fol. 725] 275 Q. What is the statement? What does it say, if you know?

A. I have been getting $250 loan—that's the best I can tell you. Then it's been stricken out and it looks like "100" before it. And as far as I can see, I never initialed that unless it's been initialed over again. I can't see it.

276 Q. This being your statement, what is the fact as to how much it was?

A. A hundred dollars is what it should be, I believe. I had been getting a hundred dollar loan every three weeks . . . that is very difficult to say and they weren't all the same at no time.

Mr. Harrington: Now this is testimony, not what you are reading, is that right?

The Witness: That is right. I have no way at all of reading that correctly, that one line.

277 Q. So that if this statement which you are reading from shows 250, is that incorrect?

A. Yes, that is incorrect. I don't think at any time I received a loan of two-fifty from Henslee & Henslee.

278 Q. And the correct fact with reference to your loans would be what figure?

[fol. 726] A. Well, that's what I say I couldn't average it, because I got three or four loans and they were all different. I had a loan at one time of $200 and another one, I believe, of a hundred, and I just can't say. They were around $100, maybe a hundred and a quarter at one time. I couldn't say. Without the records, I couldn't say. But it wouldn't be two-fifty, any loans of two-fifty.

279 Q. When Mr. Scanlan was there at that time, at the time this statement was taken, did you have any discussion with him with reference to changing this figure in the last line of Page 8?

A. If I talked to him and went over it, I don't know. The fact is I didn't initial it. Every time we came across something we initialed it and he stopped me. I don't recall initialing this one. I can't find it. I might have made this statement. I was getting that much at times from the Pennsylvania Railroad. This is testimony now, from the Pennsylvania Railroad which might have confused me when he

asked me about loans from Henslee & Henslee. I was getting loans sometimes that big from the railroad but mostly $200. We might have went over that, but I can't find where I initialed it at, so I couldn't say.

[fol. 727] Q. Well, now, following that statement you have made about the figure on the last line of Page 8, will you continue reading the statement if you can?

A. I am reading now.

. . . loans every three weeks from the Henslee firm and when Mrs. Troxtell was in Chicago with me—she has initialed that—Harrington told me—and "her" has been marked out and she put "me" in there and she has initialed that—she should keep a family on $200 per month.

Finally in April I had Robert Carrico who had taken over Rummel's job as griever call Harrington to tell him I wanted—I can't make the two words out after "wanted".

Mr. Harrington: Let the record so show that the witness cannot read the two words on line 8, the last two words on line 8, Page 9.

A. . . . not so much for money but to get medical attention for my hand. Carrico told him I wanted either the money or my hand fixed or the money so I could find a doctor on my own. Harrington told Carrico to have me go back to work at least one day, this in order to pass the physical [fol. 728] and work at least one day. I went back to work —the next word can't be made out clearly.

Mr. Harrington: Let the record show that the witness is unable to read the first word of line 10 from the bottom of Page 9.

A. . . . three or five days. My hand was still paining and I signed off again. I settled my case in Chicago April 28, 1960 in Harrington's office. In the final settlement I received $5,500 of which I paid an attorney fee of $1,375. I repaid $550 which Henslee & Henslee had loaned me. Also from the settlement I repaid the Pennsylvania Railroad $1,200 I had—I can't make it out.

Mr. Harrington: Let the record show the witness is unable to read in line 1, Page 10, the word after "I had".

A. . . . from them and $75.40 loan from Railroad Retirement. I received a check from the Henslee firm for $2,303.60 which was less than the wages I had lost.

I have read the following statement of ten—I can't make the next two words out.

[fol. 729] Mr. Harrington: Let the record show the witness is unable to read the third and fourth words in line 7 from the top of Page 10.

A. . . . pages and the same is true to the best of my recollection and belief.

Lawrence E. Troxtell—and it is also signed by Virginia L. Troxtell.

281 Q. Now, Mr. Troxtell, with the exception of the figure which appears on the last line of Page 8, which you have been unable to make out, does what you have read constitute accurately the statements that you made to Mr. Scanlan the date that this statement was reduced to writing?

A. To the best of my knowledge from the time expired, that's the best I can remember what I made.

282 Q. This is accurately what you told him at that time and place?

A. Yes, at the house outside of this right here. This right here, there is controversy on that.

283 Q. And you have already explained why you are unable to show one definite figure there?

A. Yes.

[fol. 730] 284 Q. And when you first started to testify today, you were referring to a written instrument which was, in fact, one of the photostatic copies of this Exhibit 4?

A. Yes.

285 Q. You were refreshing your memory from that when Mr. Harrington objected, is that right?

A. That is right.

Mr. Sharp: No further questions.

Recross examination.

Questions by Mr. Robert E. Harrington:

286 Q. Mr. Troxtell, the photostatic copy of the statement that you have just been reading from, when did you first receive that photostatic copy?

A. Yesterday, I believe.

287 Q. And from whom did you receive it?

A. Mr. Sharp.

288 Q. Is it not a fact that the first time that you found out that you had a fracture in your hand was in October or November of 1959?

A. I believe it was somewhere near that date.

289 Q. And the accident happened in June?

A. In June, yes.

[fol. 731] 290 Q. And you had been under the care of the company doctors up to that time?

A. Up to that time, yes.

291 Q. And after you saw the doctors in Chicago, were you not advised to remain under the care of the company doctors?

A. Yes.

292 Q. And one of the reasons for coming to Chicago, was it not, was to see other doctors than company doctors?

A. Other doctors than company doctors?

293 Q. Yes.

A. That is right. I wanted to see other doctors.

294 Q. Did you tell Mr. Scanlan when he took this statement from you that after Mr. Crago had visited you at the house that you and your wife had discussed the matter and you had agreed to come to Chicago?

A. I don't think it is in the statement that I told him that, or not. But if he asked me that, I told him.

295 Q. Did he put everything you told him in that statement?

A. Well, yes, everything that I told him is in there. I told him no more.

296 Q. You told him nothing else other than what is in the statement?

A. That's it right there. That's the statement to Mr. [fol. 732] Scanlan. That's all he asked for; that's all he got.

297 Q. On the date of March 23, 1961 when the statement was taken, you read that statement over, is that correct? A. Yes.

298 Q. And you signed it on that date?

A. I signed it that day.

299 Q. And your wife signed it on that day?

A. She did.

300 Q. Then it was three or four weeks later that he came back to have these corrections made?

A. I re-initialed one more place.

301 Q. At the time that you read it, were you able to read his writing at that time?

A. It was just like it was today.

302 Q. Were you able to read it and understand it when you signed it?

A. I understood it because I had just made the statement. There are a lot of words in there now that I understood then but I just can't read them in that statement now.

303 Q. The condition of your eyes has not changed since that time?

A. No.

[fol. 733] Mr. Harrington: That is all.

Mr. Sharp: No further questions.

And Further Deponent Saith Not.

(Signature Waived.)

[fol. 734] Notary's certificate (omitted in printing).

[fol. 736]

COMPLAINANT'S EXHIBIT #1

(Letterhead of Henslee & Henslee, Chicago 2, Illinois)

February 15, 1960

Mr. Lawrence E. Troxtell
1228 Beecher Street
Indianapolis 3, Indiana

Dear Mr. Troxtell:

Pursuant to your request I am forwarding a loan check in the amount of $100.00.

I have not received my medical report from Dr. Turner, however, upon receipt of same I will write you directly.

Very truly yours,

HENSLEE & HENSLEE

/s/ ROBERT E. HARRINGTON
Robert E. Harrington

REH/sg
enc

[fol. 737]

COMPLAINANT'S EXHIBIT #3

April 28, 1960

LAWRENCE E. TROXTELL

vs.

THE PENNSYLVANIA RAILROAD COMPANY

SETTLEMENT		$5,500.00
Railroad Loan	$1,200.00	
Railroad Retirement	71.40	
RAILROAD CHECK		$4,228.60
Loans	$ 550.00	
Fee	1,375.00	
	$1,925.00	
CHECK TO CLIENT		$2,303.60

.....

Lawrence E. Troxtell

[fol. 738]

COMPLAINANT'S EXHIBIT #4

Indianapolis, Indiana
March 23, 1961

My name is Lawrence E. Troxtell, age 39. I live with my wife and step-daughter at 1409 Olive St., Indianapolis, Indiana. I am employed as a brakeman by the Pennsylvania Railroad, Indianapolis, Indiana and presently on furlough.

I sustained an injury to my left hand on June 13, 1959 following which I was off work for several months. During the period I was off work with the injury my hand was in a cast. I was treated medically at the expense of

the Pennsylvania Railroad who also during this period loaned me money on which to support my family.

When I was first injured I reported the injury to George P. Rummel, now deceased but who was then griever of Local 261, Indianapolis Brotherhood of Railroad Trainmen of which I am a member. Rummel instructed me to mark off duty which I did. Following the marking off Doctors had a difficult time getting to the base of my injury. Finally the cause of the pain I had been suffering

L. E. T.

[fol. 739] page 2. Troxtell.

was found to be a hair line fracture at the base of my left thumb. The fracture was not found until sometime in October or November 1959.

After finding the fracture I called George Rummel and reported the fracture and to let him know what progress I was making with the hand. The day I called Rummel he told me that it had been a long time before they found the trouble and that I was to sit tight as someone, meaning the Pennsylvania R.R. was going to pay for that. As near as I can recall it was either late October or early November, 1959 that I called Rummel relative to finding the fracture.

About ten days later Rummel and a man named Bob (Robert) Crago from the New York Central Railroad and Legal Aid of the Brotherhood of Railroad Trainmen came to my home to see me. At that time I lived at 1228 Beecher St., Indianapolis, Ind. The called during the morning and during the first call Crago told me that the

L. E. T.

[fol. 740] page 3. Troxtell

legal aid of the Brotherhood of Railroad Trainmen had attorneys in Chicago who would see that I got a fair deal in settling the claim I had against the Railroad. Crago told me that the attorneys would see to it that I received medical care in Chicago at no cost to me. Crago told me that no doubt an attorney named Bob Harrington would handle my case and that he was sure that I would like him.

I told Crago that I wasn't interested in an attorney as the Pennsylvania Railroad was loaning me money and that

I needed the loans to live on. Crago told me that the attorneys in Chicago would do the same thing for me and all I would have to do was call them when I needed money.

Rummel and Crago were at the house about two hours. Crago did the talking and explained how the legal aid worked and how well I would be taken care of by the Chicago legal aid attorneys.

He explained it would cost me 25% of whatever settle-

L. E. T.

[fol. 741] page 4. Troxtell

ment was made and have all my expenses in going to Chicago would be paid by the Attorneys. I told Crago I would have to think it over and Crago told me that Rummel would be back to see me. About a week or so later Rummel came back to see me I agreed to go to Chicago with him just to talk to the legal aid attorneys.

About three days later I was picked up at my home by Rummel and we drove to the Union station where we took a train on the Pennsylvania Railroad to Chicago. I did not have a pass and Rummel bought a ticket and paid for it out of his pocket, to Chicago. Before train time Rummel went out and picked up a Roy McGammon, a Pennsylvania employee who had suffered a broken leg in a train in-

LT

jury. If I recall correctly McGammon rode on a pass.

We arrived in Chicago at nite and my recollection is

L. E. T.

[fol. 742] page 5. Troxtell

the date was November 9. 1959. Rummel took us in a Taxi to the Planters Hotel. At the Planters Hotel the Clerk on the desk gave me a card to sign on the top of which were the words Henslee & Henslee. It was a printed card. I signed the card but do not recall signing any hotel registration card. I think my room was 217 and I was alone in the room. Rummel and McGammon took a double room. So far as I know Henslee & Henslee paid the hotel bill, I didn't. I was there only the one night.

The following morning Rummel and McGammon met me in the lobby of the hotel and we went to the offices of

Henslee & Henslee. Rummel took me into Bob Harringtons office and introduced me to Harrington. Harrington questioned me about my injury, how it happened etc. I expect I talked to Harrington about an hour. Among other things I mentioned to Mr. Harrington that Crago had told me I could receive loans from the attorneys and Harrington

L. E. T.

[fol. 743] page 6. Troxtell

LT

told me they did loan money to clients who needed money. Harrington also told me he would send me to a Doctor who would examine me but that after I returned to Indianapolis I was to insist that the Railroad Doctors take care of the hand. I signed a contract retaining Henslee & Henslee for a fee of 25% of whatever settlement was made with the Railroad.

Rummel took both McCammon and me to see a Dr. Turner. I was given a complete physical but was not advised about my injury. I do not know the name of the Doctors who examined me. They were Orientals. Three separate Oriental Doctors saw me. On my next trip I met Dr. Turner.

I wasn't given a report by the Doctors. I was told they would send the report to my attorney. McCammon went through the same process as I did in Dr. Turners office. I was in the Doctors office about two hours.

Rummel then took McCammon and I to the Bergoff

L. E. T.

[fol. 744] page 7. Troxtell

for dinner and following dinner to the I. C. station where we caught the Train to Indianapolis.

While we were in Dr. Turner's office Rummel checked

LT

both McCammon and me out of the Planters Hotel.

On the train back to Indianapolis Rummel talked the

into LT

Conductor ~~out of~~ honoring the Pennsylvania Passes he and McGammon had and Rummel paid the conductor a cash fare for me. We rode in a car on the head end of the

James Whitcomb Riley on which there were several other men dead heading back to Indianapolis.

I again saw Harrington in Chicago in February 1960 when I went with my wife to Chicago. Mrs. Troxtell and I drove with George Agel, President of Local 261. Rummel had been killed in a traip wreck near Cleveland, Ohio, a few days prior to our trip to Chicago and Agel was taking over for Rummel. Harrington had called to tell me he wanted me in Chicago for another check up by the Doc-

L. E. T.

[fol. 745] page 8 Troxtell

tors. Roy McCammon also went with us in Agels car. We stayed at the Planters Hotel. Mrs. Troxtell and I were assigned to the same room I had had on my first trip. Again I signed the same type of Henslee & Henslee card at the hotel—I do not recall if I registered for Mrs. Troxtell or not.

The next day I saw Harrington and was sent to Dr. Turner. This time I saw Dr. Turner. He didn't give me any sort of treatment nor advise me what to do. We re-

same LT

turned to Indianapolis the ~~next~~ day. Harrington complained to Agel because I had brought Mrs. Troxtell. Harrington considered it an unnecessary expense and I told Harrington that Crago had told me it was alright for me to take my wife. Henslee & Henslee ended up paying my wife's expenses. Agel took us back home.

After the second trip to Chicago I became impatient for settlement. I had been borrowing money from Henslee

V.T. 00

& Henslee. I had been getting ~~$250~~. loan every three weeks

L. E. T.

[fol. 746] page 9. Troxtell

from the Henslee firm and when Mrs. Troxtell was in

V.T. V.T. me

Chicago with me Harrington told ~~her~~ she should keep a family on $200. per month.

Finally in April I had Robt. Carrico, who had taken over Rummels job as griever call Harrington to tell him I wanted some action not so much for money but to get

medical attention for my hand. Carrico told him I wanted either the money or my hand fixed—the money so I could find a Doctor on my own. Harrington told Carrico to have me go back to work at least one day—this in order to pass the physical and work at least one day—I went back to work either three or five days. My hand was still painful and I signed off again.

I settled my case in Chicago April 28, 1960 in Harringtons office. In the final settlement I received $5,500. of which I paid an attorneys fee of $1,375.00. I repaid $550. which Henslee & Henslee had loaned me. Also from the settlement I repaid the Pennsylvania $1,200 I had bor-

L. E. T.

[fol. 747] page 10. Troxtell

rowed from them and $71.40 loan from Railroad Retirement I received a check from the Henslee firm for $2,303.60 which was less than the wages I had lost.

I have read the foregoing statement of ten hand written pages and same is true to the best of my recollection and belief.

/s/ Lawrence E. Troxtell
/s/ Virginia L. Troxtell

Witnessed

/s/ M. P. Scanlan

L. E. T.

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* Initials in text denote scrawled writing.

[fol. 748] Notice to take depositions (omitted in printing).

To Brotherhood of Railroad Trainmen:

* * * * * * *

[fol. 749] [File endorsement omitted]

[fol. 750]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND, VIRGINIA

COMMONWEALTH OF VIRGINIA, ex rel., Virginia State Bar, Complainant,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN, c/o V. W. Satterwhite, Assistant to the President, 904 West 30th Street, Richmond, Virginia,

and

BERNARD M. SAVAGE, 3100 Mathieson Building, Baltimore 2, Maryland,

and

NORRIS W. TINGLE, 3100 Mathieson Building, Baltimore 2, Maryland,

Defendants.

Deposition of James A. Garwood—July 28, 1961

Examination before trial held at the office of G. Orcutt Brown, Esq., Attorney at Law, 98 Main Street, Hornell, New York, on the 28th day of July, 1961.

APPEARANCES:

Shults and Shults, Attorneys, by John J. Horey, of counsel for Aubrey R. Bowles, Jr., 901 Mutual Building, Richmond 19, Virginia, attorneys for the complainant.

John O. Donogan for McElroy, Young, Martin and Dunn, 707 State Tower Building, Syracuse, New York, representing Brotherhood of Railroad Trainmen, of counsel for Beecher E. Stallard, 1223-29 Central National Bank Building, Richmond 19, Virginia, attorney for Brotherhood of Railroad Trainmen.

James A. Garwood, witness.

[fol. 751] G. Orcutt Brown, Attorney at Law in the State of New York and a Notary Public.

Hearing held at the office of G. Orcutt Brown, Esq., 98 Main Street, Hornell, New York, on the 28th day of July, 1961, at 10:30 a.m., pursuant to subpoena signed by Domenick A. Gabrielli, Justice of the Supreme Court.

STIPULATION

It Is Hereby Stipulated and Agreed, by and between the attorneys for the parties hereto that copies of the testimony, all of which shall be deemed originals, shall be furnished to Aubrey R. Bowles, Esq., attorney for the complainant; to Beecher E. Stallard, Esq., attorney for defendant Brotherhood of Railroad Trainmen; to McElroy, Young, Martin and Dunn, Attorneys, of counsel for Brotherhood of Railroad Trainmen; and to Shults and Shults, Attorneys, of counsel for complainant.

Mr. Horey: Present and file notice to take deposition, dated July 19, 1961, signed and served by Aubrey R. Bowles, Jr., and with admission of service signed by Beecher E. Stallard.

Witness James Garwood is sworn.

Mr. Horey: Mr. Garwood, where do you live?

A. In Garwood, New York.
Q. How old are you?
A. 44.
Q. And by whom are you employed?
A. Erie Railroad. Or should be Erie-Lackawanna.
Q. About how long have you worked for them?
A. 20 or 21 years.
Q. And what is your position?
A. Yard conductor.
Q. Has all of your service been as yard conductor?
[fol. 752] A. No. Three years' track work.
Q. And how many years have you worked as a yard conductor?
A. Oh, probably 19 years.

Q. And generally, do your duties involve switching and movement of railroad box cars in the Hornell yard?

A. Yes.

Q. Are you a member of the Brotherhood of Railroad Trainmen?

A. Yes.

Q. And of what lodge?

A. Pier Maloney Lodge #1050.

Q. That's with headquarters in Hornell?

A. Yes sir.

Q. You have been a member of that lodge for at least 10 years?

A. At least, yes.

Q. And you were a member during the years 1951-1961?

A. Yes sir.

Q. Did there come a time, Mr. Garwood, on or about June 11, 1960, when you received an injury while working for the Erie-Lackawanna Railroad?

A. Yes.

Q. And following that injury, were you confined to a hospital?

[fol. 753] A. Yes, I was.

Q. What hospital, and where?

A. St. James Mercy Hospital, Hornell.

Q. Incidentally, who was the Hornell chairman of the Brotherhood of Railroad Trainmen?

A. Leander Pickard.

Q. And you are acquainted with Mr. Pickard?

A. Yes.

Q. And you have known him for how long?

A. 18 or 19 years.

Q. Can you tell me approximately how long he has been chairman of the trainmen in Hornell?

A. Well, I would say approximately 6 years anyway.

Q. And am I correct that Mr. Pickard is elected by a vote of members of the lodge?

A. Yes sir.

Q. Now, following your injury, I think you stated you were confined to the St. James Hospital in Hornell?

A. Right.

Q. Approximately how long were you in the hospital?

A. 8 or 9 days.

Q. And while you were in the hospital, Mr. Garwood, did Mr. Pickard come to see you?

A. Yes sir.

Q. Were you admitted to the hospital the same date [fol. 754] you were hurt?

A. Yes.

Q. Approximately how long had you been in the hospital before he came to see you?

A. About 2 days, I believe it was.

Q. Did he come to the hospital to see you more than once?

A. He came twice at my request.

Q. And the first time he came to see you, Mr. Garwood, was about 2 days after you were admitted?

A. Yes.

Q. And at that time did you have some conversation with regard to the injury you had received?

A. Yes, we talked about it.

Q. Will you tell me, Mr. Garwood, as best you recall, what Mr. Pickard said and what you said?

A. We talked about how it happened. Also on how lucky I was not to get hurt worse.

Q. And that was the sum and substance of that conversation?

A. Yes.

Q. How many days was it before you saw him again in the hospital?

A. About 4 days.

Q. And on this second visit did you have some conversation with regard to the accident in which you had been injured?

[fol. 755] A. Yes sir, we did.

Q. Will you tell me, Mr. Garwood, what Mr. Pickard said to you and what you said to him at that time?

A. He asked if I heard about legal advice, he informed me that the Union had legal aid or services if needed, if the person wanted them.

Q. And what did you say?

A. I said well, I wasn't sure yet whether I wanted anyone or not.

Q. Did he tell you the name of the legal representative of the brotherhood?

A. Well, I believe he did, but I don't remember.

Q. When you refer to union, you refer to the brotherhood?

A. Yes, Brotherhood of Railroad Trainmen.

Q. Was anything else said at that time?

A. No.

Q. Was there any conversation with reference to the amount of fees that the Brotherhood attorneys charged?

A. No, there wasn't.

Q. Was there any conversation with regard to having a representative of the Brotherhood's attorneys call on you?

A. Not at that time, no.

Q. That was the sum and substance of the conversation the second time in the hospital?

[fol. 756] A. Yes sir.

Q. At least with regard to the accident and any attorneys being involved?

A. Yes, that's right.

Q. Did you see Mr. Pickard after you left the hospital?

A. About four days after I left the hospital.

Q. Where was that at?

A. At my home.

Q. He came up there?

A. Yes, at my request.

Q. You had called him?

A. I had called him.

Q. When Mr. Pickard saw you in the hospital, did he say in words or in substance that he was there as the chairman of the union?

A. No, he didn't.

Q. You knew, however, that he was chairman of the union?

A. Yes.

Q. Approximately 4 days after your release from the hospital, you saw him again at your home?

A. Yes.

Q. At that time did you have any conversation with regard to the accident, your injuries, and the possibility of having attorneys represent you?

A. Yes, I did.

[fol. 757] Q. Will you tell me what Mr. Pickard said at that time and what you said?

A. I asked Mr. Pickard to get in touch with the legal aid for me, that I would like to talk with them.

Q. What did he say?

A. He said he would get in touch with them and have them come up and see me.

Q. Did he say how he would get in touch with them?

A. I believe he said he would write to them.

Q. Do I understand that you asked Mr. Pickard to get in touch with the legal attorneys for the union?

A. Yes, I asked him.

Q. Did he at that time, 4 days after you were released from the hospital, or any time you were in the hospital, at any time suggest to you or urge you to talk with the union attorneys?

A. No, he did not.

Q. Did he at any time following the accident, up to this time, did Mr. Pickard urge you or ask you to talk with the union attorneys?

A. No sir.

Q. Now following the conversation at your home, did you talk with the attorneys for the union?

A. Yes, I talked with the attorneys.

Q. Approximately when was that?

[fol. 758] A. About 3 days later, I believe.

Q. And where?

A. At my home.

Q. And do you know who you talked with at that time?

A. It was Murray Dunn.

Q. And was Mr. Pickard there?

A. Yes, he was there.

Q. Did he arrive with Mr. Dunn?

A. Yes.

Q. Do you know what time of day this was?

A. About 7 o'clock in the evening.

Q. This would have been some time in the middle of June, 1960?

A. Somewheres, yes.

Q. And at that time did you retain Mr. Dunn or his firm to settle your claim?

A. Yes, I did.

Q. Did you sign a written retainer agreement, that you know?

A. Yes sir.

Q. And who produced the written retainer agreement?

A. Mr. Dunn.

Q. Before Mr. Dunn came there, had you had any talk with Mr. Pickard as to what percentage the attorneys would charge you for handling your case?

[fol. 759] A. No, I had not.

Q. Did you when Mr. Dunn came there?

A. Yes sir.

Q. And what was that percentage?

A. 25%.

Q. And did you sign a retainer agreement at that time?

A. Yes sir.

Q. Now, following the conference at your home, did you at any other time talk to Mr. Dunn or any member of his firm when Mr. Pickard was present?

A. No, I did not.

Q. Now, Mr. Garwood, you told us that you did have a conference at your home at which Mr. Pickard was present?

A. Yes sir.

Q. Now following that conference, did you have any talk with Mr. Pickard when Mr. Dunn was not present with regard to retaining union attorneys?

A. No sir.

Q. When you talked to Mr. Dunn at your home, was there any conversation about any cash advances being made to you?

A. No, there was not.

Q. And at the conference at your home, was Mr. Dunn introduced to you by Mr. Pickard?

[fol. 760] A. Yes sir.

Q. And was he introduced to you as a member of the firm

which was attorneys for the Brotherhood of Railroad Trainmen?

A. Yes sir.

Q. And that introduction was made by Mr. Pickard?

A. Yes sir.

Q. So following the conference at your home, approximately in the middle of June, at no other time did you meet with Mr. Pickard and any union attorneys when Mr. Pickard was present?

A. No.

Q. Were any cash advances made to you at any time by Mr. Dunn or any of his associates?

A. Yes.

Q. Cash advances were made?

A. Yes.

Q. Approximately how long after the accident were they made?

A. I would say probably two months, I believe.

Q. And was more than one cash advance made?

A. No sir.

Q. There was but one cash advance?

A. Yes.

Q. How much was that?

[fol. 761] A. $200.00.

Q. Your case was eventually disposed of by settlement?

A. Yes, it was.

Q. That cash advance was deducted at the time the settlement was put through?

A. Yes, it was.

Q. Had you had any injury while working for the railroad before the injury of June, 1960?

A. I had one in 1945.

Q. Was that disposed of by a settlement?

A. Yes sir.

Q. Did you retain attorneys in connection with that settlement?

A. No.

Q. You handled it directly with the Railroad Claim Department?

A. Yes sir.

Q. At any time when Mr. Pickard was talking to you while you were in the hospital, or afterwards, did he have any comment to make to you about the railroad Claim Department?

A. No.

Q. He didn't say anything at all about the railroad Claim Department?

A. No sir.

[fol. 762] Q. Following Mr. Dunn being at your home, I assume that you met with either him or other representatives of his firm on various occasions?

A. Yes sir.

Q. Did Mr. Dunn or any representative of Mr. Dunn at any time advise you as to the amount of settlement you would get?

A. No sir.

Q. No figure was set or no promise was made as to the amount?

A. No sir.

Q. Mr. Garwood, would you sign your name on this piece of paper four or five times? (Mr. Garwood does so.)

May the record show that it is stipulated between counsel that Exhibit 1 for Identification consists of the signature of the witness James Garwood in four successive places as received in evidence.

Q. Mr. Garwood, I show you plaintiff's Exhibit 2 for Identification and show you a signature on the lower right hand corner, and ask if that is your signature?

A. Yes.

Q. That was signed by you?

[fol. 763] A. Yes.

Q. I ask you to look at that document and ask if it is the same as signed by you?

A. Well, it looks the same.

Q. And I call your attention to a signature in the lower left hand corner above the word "Witness". Whose signature is that?

A. Harold P. Lewis.

Q. Do you know Harold P. Lewis?

A. Yes sir.

Q. Did Mr. Lewis sign the Exhibit 2 with you, in your presence? Did you see Lewis sign this?

A. No, I didn't.

OFFER IN EVIDENCE

Q. I offer Exhibit 2 for Identification in evidence and request that it be annexed to and made a part of witness's deposition.

Let the record show that the exhibit was made available for examination to defendant's attorney.

Witness Mr. Garwood was then examined by Mr. Donogan.

Mr. Donogan: Mr. Garwood, do you remember when Mr. Lewis— How did you see Mr. Lewis?

A. He came to my home.

Q. Do you remember what date he came to your home?

A. I don't remember the exact date, no.

Q. I show you Plaintiff's Exhibit 2 for Identification. [fol. 764] Under your name in the lower right hand corner, is there a date indicated in there?

A. November 4, 1960.

Q. Is that the first time you saw Mr. Lewis?

A. I only saw him one time.

Q. Did you see him before this was typed up?

A. He was at my home in the morning, and in the afternoon I came to Hornell to go to work and I signed the paper.

Q. Did Mr. Lewis type this paper in your presence? Or was the paper typed in your presence?

A. No, the paper was not typed in my presence.

Q. So Mr. Lewis saw you on November 4, 1960?

A. Well, that's the date on the paper.

Q. At that time did the relationship of attorney-client exist?

Mr. Horey: I object to the form of that question.

Q. At the time you signed this paper, was the firm of McElroy, Young, Martin and Dunn still your attorney?

A. Yes sir.

Q. And your case had not been concluded at that time?

A. No, it hadn't.

Q. When was the first time you met me, Mr. Garwood?

A. Last night.

[fol. 765] Q. You say Mr. Lewis saw you as you were going to work and had you sign this paper?

A. Yes sir.

Q. Did you have an opportunity to read the paper at that time?

A. I had a small opportunity.

Q. Did you read it completely?

A. Not all of it, no.

Q. At the time Mr. Lewis saw you at your home, what did he do?

A. He took down notes.

Q. Or did he supposedly write this out in longhand, or do you know?

A. To the best of my knowledge, he took down notes.

Q. You did not have an opportunity to completely read this before you signed it?

A. No.

Q. I am going to object to the admission of this statement for various reasons. For one thing, it is incompetent; Mr. Garwood never had a chance to read it completely. Second, the relationship of attorney-client was in existence at the time this paper was signed. I think it is incompetent, immaterial, and improper.

Mr. Brown: I refuse to rule on the admissibility of [fol. 766] Exhibit 2 for Identification on the grounds that such objection will have to be determined on trial of this action.

Mr. Donogan: I will take an exception to your ruling. I would like to further object to the incompetence, immateriality, and irrelevance as purported in Plaintiff's Exhibit 2 for Identification, in that it is not the original paper made and not the original notes of the witness Lewis.

Mr. Brown: Same ruling.

Mr. Donogan: Same exception.

Mr. Horey continued with his examination of Mr. Garwood.

Mr. Horey: Mr. Garwood, I think you told Mr. Donogan that Harold Lewis came to your home in the morning. Is that right?

A. That's right.

Q. You had a discussion with him at that time?

A. Yes.

Q. Did Mr. Lewis tell you who he represented when he talked to you?

A. Yes sir.

Q. What did he say?

A. He said he represented the American Association of Railroads.

Q. Following your conversation in the morning, did you [fol. 767] make an appointment to see him in Hornell that afternoon?

A. On the way to work. He made an arrangement to see me.

Q. You met him here in Hornell?

A. Yes.

Q. Where did you meet?

A. The waiting room of the Erie Railroad depot.

Q. Do you normally work there?

A. No.

Q. Did you at that time?

A. No, I stopped at the depot on the way to work.

Q. Do you normally stop at the depot or the caller's office on the way to work?

A. I normally stop at the caller's office.

Q. That is in the same place?

A. Yes.

Q. It was at that time you signed Exhibit 2?

A. Yes sir.

Q. Now, in any conversation with Mr. Pickard, did he show you any newspaper clippings or cancelled checks of any kind involving other cases?

A. No.

Q. I assume Mr. Dunn did not either?

A. No sir.

[fol. 768] Q. When you were in the hospital, how did you contact Mr. Pickard?

A. My wife called him for me.
Q. On the telephone?
A. Yes.
Q. I think you mentioned that you saw Mr. Donogan last evening?
A. Yes.
Q. He contacted you and you met with him last evening?
A. Yes.
Q. Did you meet with Mr. Donogan last evening?
A. Yes sir.
Q. And you knew or were advised that Mr. Donogan was an attorney?
A. Yes.
Q. You knew he was a member of the firm which in this area represents the Brotherhood of Railroad Trainmen, did you not?
A. Yes sir.
Q. Did you have any discussion with Mr. Pickard with regard to the matter of this examination within the last three or four days?
A. Yes sir, I did.
Q. When did you have it and where?
A. Over the telephone.
[fol. 769] Q. You called Mr. Pickard?
A. Yes sir.
Q. At his home?
A. Yes.
Q. Was that a couple of days ago?
A. Yes.
Q. What did Mr. Pickard say to you and what did you say to him?

Mr. Donogan: I object to the following of this line of questioning. I think it is irrelevant, immaterial, and has no purpose on the deposition as stated in the papers. It is irrelevant and immaterial to the basis of the complaint.
Mr. Brown: Same ruling.
Mr. Donogan: Same exception.

A. I asked Mr. Pickard what the subpoena was all about. He said he didn't know, and I asked him about calling the legal aid, the office of McElroy, Young, Martin

and Dunn, to see if they did know what it was about. So when I got through work that night I called them.

Q. What did he say when you asked him about calling the attorneys?

A. He said maybe it would be a pretty good idea so I would know what it was all about.

[fol. 770] Q. Did you call the attorneys or did Mr. Pickard call them?

A. I called them.

Q. Did he tell you he was going to call them?

A. No, he didn't say he was.

Q. Did he say for you to call them, that he would not call them?

A. I told him I would call them.

Q. And you did make the call yourself?

A. Yes.

Q. Was Mr. Pickard there when you made it?

A. No, he wasn't.

Q. You have been a member of the Brotherhood of Railroad Trainmen for approximately 19 years?

A. Yes sir.

Q. And in June of 1960 were you aware that the Brotherhood maintained a legal aid department or a legal department?

A. Yes sir.

Q. How did you first find that out?

A. Through fellow workers.

Q. And when?

A. About 5 or 6 years ago.

Q. And what was your understanding as to the relation-

[fol. 771] ship between the union and the attorneys for the union?

Mr. Donogan: I object to the form of that, he has no way of knowing of the relationship.

Mr. Horey: His understanding of it.

Mr. Donogan: His thinking doesn't mean anything if there is any relationship or not. You are basing your question on a conclusion and I am objecting to it.

Mr. Horey: You knew before June, 1960, Mr. Garwood, that the Brotherhood of Railroad Trainmen had attorneys in this general area, is that correct?

A. Yes sir.

Q. Did you know the name of the firm?

A. No, I did not.

Q. Did you know what services the attorneys were to furnish for you as a member of the Brotherhood of Railroad Trainmen, if any?

A. Yes sir.

Q. And what were those services?

A. Legal aid if the person needed it.

Q. Did you understand that that was to be paid for by you or not?

A. Yes sir.

Q. Be paid by you in any case?

A. That part I don't know.

[fol. 772] Q. And in your conversation with Mr. Pickard at the hospital, did you have any discussion with regard to what assistance the attorneys for the Brotherhood were to render to you, if any?

A. No.

Q. You had no talk about that at all?

A. No.

Q. Have you on other occasions, Mr. Garwood, used the services of an attorney? Any attorney? Other than this first injury?

A. Yes sir.

Q. Approximately how many times have you found it necessary to use the services of an attorney? Any attorney?

A. Once besides the accident case in 1960.

Q. On that occasion did you use the firm of McElroy, Young, Martin and Dunn?

A. No, I didn't, but it didn't pertain to railroad, and that was even before I even knew that firm.

Q. Do you know whether or not Mr. Pickard or any representative of the Brotherhood advised the union attorneys in writing as to your suffering and injuries while at work?

A. I don't know.

Q. And Mr. Pickard never told you either way, is that [fol. 773] correct?

A. No, he did not.

Q. In your conversations with Mr. Dunn, did you have any discussion with regard to the Railroad Claim Department and its method of operation?

A. Not that I recall.

Q. Is it possible that you could have had some conversation and have forgotten it?

A. I don't think so.

Q. Your best recollection today is that neither you or Mr. Dunn said anything about the Claim Department of the Erie-Lackawanna Railroad?

A. No, we did not.

Q. You knew it was in existence?

A. Yes.

Q. You knew from past experience this Claim Department had jurisdiction to handle personal injuries?

A. Yes.

Q. And as a matter of fact you had used their services once before?

A. Yes.

Q. Did you, following the accident of June, 1960, contact any member of the Erie-Lackawanna Claim Department, or any representative?

[fol. 774] A. They contacted my home once.

Q. I assume at that time you advised them you had obtained the services of an attorney?

A. No, I did not.

Q. The contact that was made to you was made before you had retained Mr. Dunn and his firm?

A. Yes.

Q. And following your retention of Mr. Dunn, you were not further contacted by a representative of the Erie-Lackawanna Claim Department?

A. That's correct.

Mr. Horey: I have no further questions.

The witness, Mr. Garwood, was then examined by Mr. Donogan.

Mr. Donogan: You say, Mr. Garwood, you have a prior injury, that is, prior to June, 1960, which was settled directly with the Claim Department?

A. Yes.

Q. What was the result of your settlement?
A. Unsatisfactory settlement.

Mr. Horey: I am going to object to the immateriality of this. I further object on the grounds that the statement of the witness is conclusory and opinion only.
Mr. Brown: Same ruling.
Mr. Horey: Same exception.
[fol. 775] Mr. Donogan: This is a personal feeling of his as a result of some action taken by him and it is competent. This is cross-examination on my part and I am entitled to the question and the answer.
Mr. Garwood, you stated you heard of the firm of McElroy, Young, Martin and Dunn prior to your injury?

A. Yes.
Q. How did you hear of the firm, prior to your injury of 1960?
A. Through a fellow worker.
Q. What do you mean, through a fellow worker?
A. One of the fellows, or other fellows who worked in the yard with me.
Q. Did you have a conversation with them at some time?
A. Yes, I had a conversation with one.
Q. What was the substance of that conversation?

Mr. Horey: For the record, I object to the conversation on the grounds that it is hearsay.
Mr. Brown: Same ruling.
Mr. Horey: Same exception.

A. Pertaining to an injury he had received and a settlement the Claim Department had offered him, and also then [fol. 776] the result of the claim that he had received through the services of the legal aid. Which he was very satisfied with.
Q. In other words, did this fellow employee recommend this law firm of McElroy, Young, Martin and Dunn to you?

Mr. Horey: I object to that question.
Mr. Brown: Same ruling.
Mr. Horey: Same exception.

A. Yes sir.

Q. In other words, you had heard, as you testified of the firm of McElroy, Young, Martin and Dunn, and a fellow worker had recommended this firm to you in the event you were injured?

A. That's correct.

Mr. Horey: Same objection.

Mr. Brown: Same ruling.

Mr. Horey: Same exception.

Q. Mr. Garwood, was any pressure or promises made to you or upon you at any time, prior to or since you were injured, regarding the retention of the firm of McElroy, Young, Martin and Dunn?

Mr. Horey: I object first to the form of the question as to the word "pressure". If withdrawn, I will withdraw [fol. 777] my objection.

Q. Were any promises made to you at any time concerning the firm of McElroy, Young, Martin and Dunn?

A. No sir, there were no promises.

Q. Outside of doing a good job for you?

A. That's all.

Q. Did anyone tell you you had to hire any firm?

A. No sir, they did not.

Q. You had previously handled a claim yourself directly with the Claim Department?

A. Yes sir.

Q. Since the firm of McElroy, Young, Martin and Dunn was retained by you, have you recommended this firm to anyone else?

A. Yes sir.

Q. Regarding railroad injury cases?

A. Yes sir.

Q. Do you have any feelings concerning the manner in which your claim was handled?

Mr. Horey: I object to any feelings he has as being incompetent and irrelevant.

Mr. Brown: Same ruling.

Mr. Horey: Same exception.

Q. Are you satisfied or dissatisfied with the manner in [fol. 778] which your claim was settled?

Mr. Horey: Same objection.

Mr. Donogan: I think he is qualified to answer this question.

Mr. Brown: Same ruling.

Mr. Horey: Same exception.

A. I am satisfied.

Q. Did the railroad advance you any money to live on following your injury?

A. The railroad, no.

Q. Following your injury, before you returned to work, did there come a time when you and your family needed funds to subsist on?

A. Yes sir.

Q. At that time did you request a loan for living expenses?

A. Yes sir.

Q. That loan Mr. Horey referred to as a cash advance?

A. Yes.

Q. When Mr. Lewis came to see you, did he mention any lawsuit to you? That is, a lawsuit by the Commonwealth of Virginia, ex rel., against the Brotherhood of Railroad Trainmen?

A. No, he did not.

[fol. 779] Q. And again I state this was while the firm of McElroy, Young, Martin and Dunn were still your legal representatives when he came to see you?

A. Yes sir.

Q. Your case had not been concluded at that time, November 4, 1960?

A. No sir.

Q. It had not been concluded?

A. No.

Q. At the time of your injury, Mr. Garwood, you didn't really have any personal knowledge of any relationship between the firm of McElroy, Young, Martin and Dunn, and the Brotherhood of Railroad Trainmen?

Mr. Horey: I object to the form of that question.

Q. Did you have any knowledge of any alleged relationship between the firm of McElroy, Young, Martin and Dunn, and the Brotherhood of Railroad Trainmen?

Mr. Horey: I object to that as being incompetent, irrelevant, and immaterial.

Mr. Brown: Same ruling.

Mr. Horey: Same exception.

Mr. Donogan: Well, it's within his personal knowledge.

[fol. 780] A. No sir.

Q. You didn't know whether any relationship or not existed?

A. I didn't at that time.

Q. You don't know now, do you?

A. Not to my knowledge.

Mr. Horey: When you say "at that time", Mr. Garwood, are you referring to the time of your injury?

A. That's right.

Mr. Donogan: You had heard that the firm of McElroy, Young, Martin and Dunn were experts in the field of railroad negligence?

A. That's correct.

Mr. Horey: I object to that on the grounds of hearsay.

Mr. Brown: Same ruling.

Mr. Horey: Same exception.

Mr. Donogan: I yield.

Mr. Horey: Mr. Garwood, I believe in an answer to a question, you stated that at the time of your injury, which was in June, 1960, you had no knowledge of any alleged relationship between the McElroy firm and the Brotherhood of Railroad Trainmen? Is that correct?

A. That's correct.

[fol. 781] Q. Did you have any knowledge of the existence of the firm of McElroy, Young, Martin and Dunn at the time of your injury in June, 1960?

Mr. Donogan: Objection, he has already testified.

Mr. Brown: Same ruling.

Mr. Donogan: Same exception.

A. Yes.
Q. You knew there was such a firm?
A. I knew there was such a firm.
Q. Did you know where they were located?
A. No, I did not.
Q. How did you find out where the firm was located?
A. Through Mr. Pickard when I called him.
Q. You asked Mr. Pickard?
A. I asked him.
Q. Or did he tell you?
A. He told me where it was.
Q. I think you told Mr. Donogan that no one told you you had to hire any firm of attorneys, is that correct?
A. Yes.
Q. Did anyone urge you suggest to you that you should retain any attorney in connection with your personal injury?
A. No.
[fol. 782] Q. No one ever suggested that you should have legal counsel, whoever it may be?
A. No.
Q. Now, you told Mr. Donogan that you have recommended his firm to other people, is that correct?
A. Yes.
Q. Did Mr. Donogan, or any member of the firm of Mr. Donogan, or other representatives of it, ask you to do this?
A. No, they did not.
Q. You stated that the railroad did not advance you any monies after your injury and before you returned to work?
A. The railroad didn't, no.
Q. Did you know if there was a practice on the Erie-Lackawanna to make advances to men who had been injured pending settlement of their personal injury claims?
A. I knew they could get it if they wanted it. Under the Crosser Bill,
Q. When you refer to the Crosser Bill, you are referring to an act under the Federal Employment Act, under which certain sickness benefits are paid to injured employees?
[fol. 783] A. Yes.

Q. And you at no time asked any representative of the railroad to advance you any money?

A. No, I did not.

Q. When you were contacted by a representative of the Claim Department, was the matter of monies discussed at all?

A. I don't recall.

Mr. Horey: I guess that's all.

Mr. Donogan: Following your injury of June, 1960, Mr. Garwood, it has been brought out that you drew benefits under what is known as the Crosser Amendment to the Railway Labor Act, which was also called sickness benefits.

A. Yes sir.

Q. In order to obtain these benefits, must you file an application and submit medical reports?

A. Yes sir.

Q. And this comes from the United States Government Railroad Retirement Board?

A. Yes sir.

Q. Who was your attending physician at that time, was it a Dr. Kelly?

A. Dr. James Kelly.

Q. Did there come a time when he stopped signing medical [fol. 784] forms?

Mr. Horey: I object to this as immaterial.

Mr. Brown: Same ruling.

Mr. Horey: Same exception.

A. Yes.

Q. And was it at that time that you made a loan?

A. Yes sir.

Mr. Horey: Same objection.

Mr. Brown: Same ruling.

Mr. Horey: Same exception.

Q. Had you returned to work at that time?

A. No.

Q. Did you remain out of work for some time after Dr. Kelly refused to sign medical forms?

A. Yes sir.

Mr. Horey: Same objection.
Mr. Brown: Same ruling.
Mr. Horey: Same exception.

Q. Mr. Pickard was your local chairman at the time of your injury?
A. Yes sir.
Q. Is he still your local chairman?
A. Yes.
Q. Had you ever discussed railroad problems with him prior to your injury on June 11, 1960?
[fol. 785] A. Yes.
Q. Have you discussed railroad problems with him since your accident?
A. Yes.
Q. That's his job, isn't it?

Mr. Horey: Objection. It's beyond the knowledge of the witness, it's incompetent and immaterial.
Mr. Brown: Same ruling.
Mr. Horey: Same exception.

Q. He's still your chairman in the railroad yard?
A. Yes sir.

Mr. Horey: Same objection.
Mr. Brown: Same ruling.
Mr. Horey: Same exception.

Q. You testified that you asked your wife to call Mr. Pickard to come to the hospital to see you?
A. Yes sir.
Q. Did he bring any papers to you while you were in the hospital?
A. Yes sir.
Q. What were these papers about?
A. The application for sickness benefits.
Q. At that time did you discuss any insurance benefits?
A. Well, no, we didn't.
Q. Do you carry Brotherhood insurance?
[fol. 786] A. Yes, I carry it.

Mr. Horey: Do you know if Mr. Pickard receives a salary from the Brotherhood?

A. I don't know.

(This concluded the examination of Mr. Garwood.)

Mr. Brown: For the record, where objections have been made and overruled, it is on the grounds that the objection is a matter for the trial court or court hearing the action, and the objections were overruled on the grounds and with the understanding that the same may be marked at the trial of the action and be ruled on at that time, and that in each case all parties have been given duly noted exception to each refusal to rule.

I, James Garwood, do certify that I have read the foregoing transcript, consisting of 37 typewritten pages, and hereby affix my signature at the end thereof.

/s/ James Garwood

[fol. 788] Commissioner's certificate (omitted in printing).

[fol. 791]

PLAINTIFF'S EXHIBIT 2 FOR IDENTIFICATION

Garwoods, N. Y.
November 4, 1960

81831.2

My name is James Garwood and I reside on the Garwoods Road at Garwoods, New York. I am 43 years of age and employed by the Erie Railroad as a Yard Conductor.

On June 11, 1960 I sustained an injury to my left ankle; ribs on my left side and a cut upon the right front side of my head, while working my tour of duty in the Hornell Yards of the Erie Railroad. Following my injuries I was taken to the St. James Mercy Hospital in Hornell.

Several days after the date of my injury and while still a patient in the St. James Hospital, Mr. L. A. Pickard, Local Chairman of the Brotherhood of Railroad Trainmen, to which I belong, called upon me. I had a previous injury while employed by the Erie Railroad about 10 years ago and I had settled my resultant claim, direct with the Erie Claim Department without the aid of an attorney. At the time Mr. Pickard called upon me in the hospital, there was no thought in mind to hire the services of an attorney, as far as I was concerned. Mr. Pickard thought I should have an attorney to look after my interests in the matter of the claim I would have against the Erie as a result of my injuries. In fact, Mr. Pickard urged me to retain the services of a Law Firm located in Syracuse, N. Y. who were, he explained, the Legal Aid Attorneys for the Brotherhood of Railroad Trainmen. The name of this Firm is McElroy, Martin, Dunn and Young. Mr. Pickard said he would write to them explaining about my accident and that someone from this firm would probably call upon me, relative to my claim. In as much as Mr. Pickard is the Local Chairman and urged me to retain Legal Counsel in my behalf against the railroad I agreed to having him make contact with the Legal Aid Attorneys.

About 3 weeks after the date of my accident and after I had been discharged from the hospital and had returned

to my home in Garwoods, N. Y., which is located in Allegany County, Mr. Pickard brought a man to my home whom he introduced to me as Attorney John Donnegan of the McElroy Firm in Syracuse. Even at this point, I still had not made up my mind about retaining counsel. I had talked to members of the Erie Claim Department but there had been no talk of settlement as I was still convalescing from the injuries I had received. Mr. Pickard and Attorney Donnegan pointed out that I should have an attorney to represent me so my rights would be protected and I would get full value of my claim. I finally agreed to retain the McElroy firm and signed a contract with Attorney Donnegan in which I agreed to pay them the sum of 25% of whatever settlement I might get, as their fee.

The attorneys filed suit, in my behalf, against the Erie Railroad for $100,000.00 but my case was settled, out of court, on October 26, 1960 for $5,100.00. As of this date, November 4, 1960, I still have not received my settlement check from my attorneys.

I have read this one page statement and it is all true to the best of my knowledge and belief.

/s/ James Garwood
James Garwood

November 4, 1960

/s/ Harold P. Lewis
Witness

[fol. 792] Notice to Take Deposition (omitted in printing).

To Brotherhood of Railroad Trainmen:

* * * * * * * *

[fol. A]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

COMMONWEALTH OF VIRGINIA, ex rel., VIRGINIA STATE BAR,
Plaintiffs,

—VS—

BROTHERHOOD OF RAILROAD TRAINMEN, BERNARD M. SAVAGE,
and NORRIS W. TINGLE, Defendants.

Trial Proceedings of October 9, 10, 11, 13, 1961

Before: Honorable Brockenbrough Lamb, Judge.

APPEARANCES:

Bowles, Boyd & Herod, Counsel for Plaintiff, By: Aubrey R. Bowles, Jr., Esq., Aubrey R. Bowles, III, Esq.

Beecher E. Stallard, Esq., Counsel for Defendants, Brotherhood of Railroad Trainmen.

[fol. 2] October 9, 1961

The Court: Good morning, Gentlemen. The case of the State Bar against the Brotherhood is set for 10:30, Gentlemen. I see everybody is here now. Are there any motions before we begin that case?

RENEWAL OF MOTION OF DEFENDANT THAT IT BE FURNISHED WITH NAMES AND ADDRESSES OF WITNESSES AND DENIAL THEREOF

Mr. Stallard: Yes, Your Honor. I want to renew my motion. The defendant, Brotherhood, renews its motion at this time that the plaintiff be required to give defendant the names and addresses of witnesses which plaintiff expects to use in this cause. The reason for making this

is that under the present rules of the Supreme Court of Virginia, a lawsuit is not a hide-and-go-seek proposition, but it is based on justice after its presentation of all the evidence on both sides. If defendant does not know the names of plaintiff's witnesses, then he cannot refute plaintiff's evidence, since this does not concern only local witnesses, but witnesses who undoubtedly will come from various parts of Virginia.

Mr. Bowles, Jr.: Your Honor please, in the light of that statement, may I be allowed to make a short one?

The Court: Just as you please.

Mr. Bowles, Jr.: We resisted that motion at the time it was made on two grounds: The first, that the motion did not set forth the situation referred to in the law rules [fol. 3] on which, I presume, by inference, Mr. Stallard undertakes to rely. Secondly, that in the taking of the depositions, it has come to our notice that during the taking of them, the more notice we gave of the taking of the depositions, the more visitation there was by members of the Brotherhood on the prospective witness. Therefore, sir, we saw no reason why we should be required, there being no rule, as I understand it, to furnish the defendant with the names of our prospective witnesses to testify to matters which are equally and fully, and even more fully, in the knowledge of the defendant than they are of the plaintiff.

The Court: The motion of the defendant is overruled, to which action of the Court the defendant by counsel objected and excepted.

Mr. Stallard: Yes.

The Court: Now, Mrs. Cessna, have you got the style of the case and the appearances?

The Reporter: Yes.

(The reporter was sworn by the Court.)

The Court: Let the record show the oath was taken, please.

Motion to Strike Depositions and Exhibits and Ruling Thereon

Mr. Stallard: Your Honor, I have other motions, copies of which are furnished counsel for the plaintiff. The [fol. 4] motions are pertaining to depositions which were taken in the State of California, Indiana, Illinois, Pennsylvania, New York, and other places. While objections were made in the record to the introduction of certain evidence and, for example, the witness had signed a written statement outlining what he thought took place between him and some representative, either of the Brotherhood or of his local union, those exhibits were written up, or the statement written up, by the Association of American Railroads' representative and the witness signed it. Then those statements were handed to the witness, and he introduced the statements as exhibits, and there are other many reasons why we want to make a formal objection to the introduction of those exhibits. Now I don't feel at this time, until you have heard those depositions read, that you could pass on the motion, but I wanted to give counsel plenty of time so he could reply to the motions, and they pertain to only the depositions which have been lodged here over a period of months.

The Court: And you have furnished counsel copies of those?

Mr. Stallard: Yes, sir.

The Court: I will pass on those motions when we reach them, as you suggest.

Mr. Stallard: Yes.

[fol. 5] The Court: If you will just keep them.

Mr. Stallard: Yes.

Colloquy Between Court and Counsel

Mr. Bowles, Jr.: I didn't catch that. You furnished counsel copies of the motions?

Mr. Stallard: Various motions. You have them.

Mr. Bowles, Jr.: Well, I noticed one here, I haven't had a chance to read it, but I see that the certificate says it was handed to us on the blank day of September.

Mr. Stallard: Well, I guess if you will read the other, it says October there. There were some of them written in October, and some of them, as you know, they just came in through September and October.

Mr. Bowles, Jr.: Yes, but I just got it this morning.

Mr. Stallard: If you will look down there, I have certified down here—I didn't change that, this is October 9 here.

Mr. Bowles, Jr.: Your Honor, the copy that I have says I got it on the blank day of September, which isn't so. I got it this morning.

The Court: Let's amend, and fix it right. You will date it October 9.

Mr. Stallard: Your Honor, I didn't sign those. Some of them were dictated in September, and some in October, [fol. 6] as they came in. All of them say October 9.

The Court: This morning?

Mr. Stallard: Yes, sir, this morning. I didn't sign that at all. It was just written up.

The Court: Any further preliminary motions?

Mr. Stallard: No, sir.

The Court: Court recesses until 10:30. Court will recess until 10:30.

(Recess.)

The Court: The Court is ready, Gentlemen.

OPENING STATEMENT OF MR. BOWLES, JR.

Mr. Bowles, Jr.: If Your Honor please, this matter, Commonwealth of Virginia in relation to the Virginia State Bar against the Brotherhood of Railroad Trainmen, an unincorporated association, operating in all of the states of the United States, is the effort of the Virginia State Bar to prevent this association from practicing law in this Commonwealth.

I call your attention, if Your Honor please, to certain phases of the Bill of Complaint. At the outset, I would like to say to the Court that I think you will see as we proceed that in a sense this is a monumental task created in some respects by the very nature of the matter. In other re-

spects, by the answer and defense presented by the de-
[fol. 7] fendant. The complaint sets forth that this association has for a long number of years engaged in certain practices, the practices, by way of example, enumerated in the complaint in Paragraph 5.

The Brotherhood maintains what it calls a Legal Aid Department which, by collecting for that, is valuable for certain other purposes; also, solicits business through the means of certain of its employees and members of its lodges for various attorneys at law throughout the United States, which have been selected by the Legal Aid Department and designated by said department as regional or legal counsel.

Paragraph 6, if Your Honor please, sets forth the method by which this solicitation is carried out.

Paragraph 7 shows the relationship of the legal or regional counsel to the Brotherhood, and that general allegations, and as we expect to show, is that these regional counsel or legal counsel as they are now called, are set up by designation of the president of the Brotherhood, who under its constitution is the sole person having authority to operate the Legal Aid Department. The president has undertaken to say, as we shall later show, that the selection of regional and legal counsel is made after very careful consideration of each of them as to integrity, ability, and
[fol. 8] competence.

Now, the president has said, by way of deposition, that he has, in each instance, exercised that judgment by such careful investigation into the background of each of the legal counsel and regional counsel that now hold office, and when he became president in 1949, I believe it was necessary under the constitution that he reappoint each one that then existed, and to appoint others if that should be necessary, but each such appointment was made after such investigation into the background of each of these regional counsel.

Now, if Your Honor please, the system under which they operated in the beginning was that the Brotherhood controlled who were the regional counsel; the Brotherhood controlled what they should charge to the people who were members of the Brotherhood that they represented in per-

sonal injuries, and death cases, under their Federal Employers Liability Act; that the Brotherhood controlled the disposition, in large respect, of the fees so charged, and in varying amounts, from the beginning to the present time; that the distribution of the 25 percent charge to the injured person or the executor of the deceased member would go 5 percent at one stage, and other percent in other stages, to the Brotherhood for the maintenance of that department.

[fol. 9] The Brotherhood had on its payroll jointly on the payroll of regional counsel, certain people that were called investigators, known as regional investigators. Those investigators carried cards signed by the president, authorizing them to make themselves known to prospective litigants and members of the Brotherhood, to identify themselves and show that they were speaking for the Brotherhood; that those investigators would then go upon the happening of an accident, by virtue of the fact that each secretary of each lodge was required to notify the Grand Lodge, immediately upon the happening of an accident that had happened. The investigator would then undertake to investigate, reports would be sent by the investigator of the accident, both to the Brotherhood's Legal Aid Department, and also to regional counsel. These regional investigators carried contracts, solicited employment of regional counsel, and got signed contracts for employment whenever the person could successfully do so. That system is, in general, the way this thing came about in 1930. It is the system that has from time to time, with variations, prevailed throughout the United States, in the operation of this Legal Aid Department. From that time, until, as we allege, right now.

Now, if Your Honor please, the complaint in this matter was not only against the Brotherhood, but against [fol. 10] one Bernard Savage, a lawyer who is licensed to practice law in Maryland, but not in Virginia. And likewise, against a man named Tingle, who was and is the regional investigator of that area that is assigned to Mr. Savage's office, and operates through Mr. Savage and the Brotherhood in the matter in which I have described.

Now, we will show to you at the appropriate time, that through a long series of negotiations with the Brotherhood, through Mr. Savage acting for it, and as its representative and as its counsel, the Third District Committee of the Virginia State Bar undertook for a long period of time to have the Brotherhood cease this method of operation and to have Mr. Savage stop letting himself, as a lawyer licensed to practice in Maryland, engage along with the Brotherhood as its representative, and to use Tingle as its regional investigator, to solicit for his own benefit and that of the Brotherhood, these cases.

Now, if Your Honor please, we will show at the appropriate time, that Mr. Savage, on behalf of the Brotherhood, made many efforts to try to come to some agreement with the Bar Association about this matter, and discussed it over a considerable period of time. Mr. Savage was very anxious to reach an agreement on his own behalf. Mr. Savage is not a resident of Virginia. Mr. Savage has been [fol. 11] served, by having the complaint delivered to him by, I think they call it, the Sheriff of Baltimore City, and so has Mr. Tingle. They have declined to appear, and I remind Your Honor that they are not parties before the Court, notwithstanding that they could have counsel in Virginia.

Now, Your Honor, the answer which is the next paper that I wish to refer to, in my judgment, is a most unusual instrument. That is paper No. 3, I believe, sir. Without going into the details of the specific admissions and denials contained in the first three paragraphs which I deem at this moment to be unimportant, because they are included in the summary that I expect to speak of, contained in the further paragraphs.

Now the Answer says in Paragraph 4, you note this admission: "This respondent Brotherhood admits that the defendant, Norris W. Tingle, is an employee of this respondent and denies all other allegations in Paragraph 4."

In Paragraph 3, I point out that "respondent Brotherhood admits that Bernard W. Savage is designated as one of its legal counsel."

Now, in 5, it is stated that the "Brotherhood admits that this defendant, prior to January 1, 1959, maintained

a department which was designated, Legal Aid Department, and further admits that the said department collected [fol. 12] information which was and is valuable to those who are interested in the welfare of railroad employees."

"Respondent further avers that on January 1, 1959, the said Legal Aid Department was redesignated as Department of Legal Counsel. Respondent denies all other allegations of Paragraph 5 of the Bill of Complaint."

Now, answering Paragraph 6 of the Bill of Complaint, "respondent Brotherhood admits that when a lodge member is injured or killed in the course of his employment, he or his family or estate notifies the lodge. Respondent further admits that prior to the change of April 1, 1959," if I may digress here—if Your Honor please, we will refer at least, I have fallen into the habit of referring to April 1, 1959, as the "magic date." It will play a large and great part in the hearing before Your Honor, because, in simple language, that is the date upon which the defendant claims to have become sanctified.

"Respondent further admits that prior to the change of April 1, 1959, hereinabove more particularly set forth, that the lodge in some cases notified the Legal Aid Department." Notice, if you will, that language, "in some cases." It will bear a very important part upon the question of admissibility of some of the exhibits here, to which I understand by briefly looking at these motions, there have [fol. 13] been taken some objections. (Continuing)— notified the Legal Aid Department, and admits that in some cases, the Legal Aid Department notified the regional or legal counsel of the injury or death, and further admits that in some cases members and employees of the respondent recommended that regional or legal counsel be consulted before the settlement of claims."

"Respondent denies all other allegations in Paragraph 6."

Now, to digress there for a moment, to make clear the position of the Virginia State Bar and its relationship to that phase of the Answer, in sum and substance that paragraph related to what we will look at in the Answer in the further particulars and the calls and other responses.

In sum and substance, the Answer and defense presented to the Court by the Brotherhood defendant here is that "up until the magic date, April 1, 1959, we agree that we were at fault, and we did all of these things that you said, but after April 1, 1959, we have been pure as the driven snow. Not only in Virginia, but elsewhere, throughout the United States, and we have not committed one sin thereafter." And the basis of the defendant is a very acceptable principle of law, that if an act is sought to be enjoined and the act has ceased to be performed, and there is no like-
[fol. 14] lihood in good faith of the repetition, then the injunctive process will not be thwarted.

Now, if Your Honor please, that presents the crux of this situation, and I submit, presents the succinct burden which the Bar feels it is under the obligation to establish; namely, that this promise of a cessation, that they are now and will be forever after pure, is not in good faith, but wholly in bad faith. And the reason for that assertion is that we propose to show to the Court and can show to the Court by the records in other courts, that this exact defense has been made to other courts throughout the United States innumerable times by innumerable officers, and by all of the presidents of this association that have ever existed, and as soon as the heat got off, they went right back to the same practice again. And on that basis, we expect to show Your Honor that there is a reasonable likelihood that they will not desist from the admitted bad practices; and further, we will show to you by the depositions that have been taken, that those practices are today continuing, not only in some seven other states of the United States in which we have happened to catch them at it, but also in the State of Virginia.

Now, reading No. 7 paragraph, answering Paragraph 7, "Respondent Brotherhood admits that regional and legal counsel handled such matters on a contingent fee basis, [fol. 15] admits that prior to April 1 that regional and legal counsel supported the Legal Aid Department, or the Department of Legal Counsel, by contributions based on the ratio which the individual counsel's gross amount of settlements bore to the total settlements of regional or legal counsel throughout the country."

And, if Your Honor please, to digress again—and when we get to that stage of the proof, I think that Your Honor will be staggered by the terrific amount of these fees throughout the country, that have been earned by these sixteen or seventeen regional counsel, during the years, running into the millions of dollars.

"Further answering respondent avers that individual counsel had agreed with this respondent as to the fee to be charged members of the Brotherhood prior to April 1, '59. This respondent denies all other allegations in answering Paragraph 8. Respondent Brotherhood denies all allegations therein and avers that prior to April 1, '59, it engaged only in those practices alleged which it has previously admitted herein."

"Respondent Brotherhood denies"—that is where it becomes significant in some instances—and we propose to show to Your Honor exactly what this plan was, exactly how it operated, how it began in 1930, and how it has been [fol. 16] operating ever since in every detail throughout the country.

"Respondent Brotherhood denies the allegations set out in Paragraph 9. Respondent Brotherhood will show unto the Court as follows: A. That on a referendum question 9 in majority vote from the members of the lodges of the trainmen in the United States in 1930, the Brotherhood established a Department of Legal Aid Department. The said Legal Aid Department was subject to the provisions of the constitution of the trainmen and to the authority of the president of the Brotherhood." We will point out to you at the appropriate time that under this constitution, the president is the sole authority to operate this department.

"B." Now, this is the significant paragraph, sir, I think.

"Paragraph B. Respondent Brotherhood further shows that after April 1, 1959 it eliminated certain practices in the operation of this Department of Legal Counsel, which had been determined objectionable; that the Brotherhood at its own expense investigates accidents of its members so that they will be acquainted with the cause of said accidents, and by so doing, it will be able to remedy any vio-

lation of the Federal Employers Liability Act and the Safety Appliance Act. The result of such investigation is [fol. 17] made available solely to the injured person or family."

We propose to show that to date that that is not correct. Now, if Your Honor please, with regard to the magic date, the magic date of April 1, 1959, came through the decision in the State of Illinois known as the Illinois decision, and will be referred to as such, throughout this hearing. On May 23, 1958, the Supreme Court of Illinois in a motion, the details of which we will show to you at the appropriate time, and the reasons why it was brought about and all about how it happened to be rendered on that date, as the result of a declaratory judgment proceeding instituted by the Brotherhood itself, declared that certain things were illegal, improper, and could not be done, and that is the "so-called" Bible upon which the Brotherhood now predicates all of its future, supposedly future operations, and upon which it claims "that we are subscribing one hundred percent to the Illinois decision," and the Illinois decision as to paraphrase Mr. Kennedy, "If that is good enough for Illinois, and Cook County, Illinois, it ought to be good enough for Virginia."

Now, incidentally, the New York Court has, under one occasion, certainly, that I know of, said that "whatever you people in Cook County, Illinois may think is moral and just, isn't going to bind New York, because we [fol. 18] don't agree with you."

Now, if Your Honor please, that decision came out on May 23, 1958. Now, in the decree, they allowed the Brotherhood until July 1, 1959, more than a year, within which to get its affairs in order, and to make up a new system by which they could operate, that would not violate the provisions of the Illinois decision.

Now, the facts are as testified by the president of this defendant, that they didn't undertake to put those things that were said by the Illinois Court were just and proper and those that were said to be wrong, they didn't change them until April 1, '59, practically one year subsequent thereto. On March 30, '59, we will show to you, the day

before this so-called magic date, and nearly a year after the Illinois Court had at its own instance, told them what they couldn't do; and specifically, one of them was to make these contributions. On March 30, their financial records show that they accepted thousands of dollars on the last day of their own-appointed time from all of these regional people that contributed by way of maintaining this Legal Aid Department.

Now, the good faith proposition here, as to whether or not they are following the Illinois decision, has many facets, as [fol. 19] you will see when we get through this tremendous amount of testimony and documentary evidence. That, notwithstanding, they had themselves asked the Illinois Court, in effect, to tell them what they could do and what they couldn't do, the Court told them they couldn't do it, they still did it for another year, because they say the Court "didn't require us to do what we ought to do up until a fixed date."

Now, we think that goes to the issue of good faith. A good many of these proceedings went on right exactly under the old system, right up until the immediate deadline, and many of them went on and flopped across. Now, in addition to that, if Your Honor please, we will show you by the depositions that have been taken, that in instances throughout these other states, that there are still going on, the exact, same system of operation between regional counsel and, in the words of Mr. Kennedy, that "We see no reason to change it until somebody jumps us about it and makes us stop." Now that is the effect of this whole situation.

Now, interrogating Mr. Kennedy on June 1—

The Court: Who is Mr. Kennedy?

Mr. Bowles, Jr.: Mr. Kennedy is the president of this Brotherhood.

In Cleveland, on June 1, 1959, going back now to the basis upon which the investigation into the character, [fol. 20] integrity, reputation, and so forth, and some of these individual lawyers they appointed as regional counsel, we went back with him in his deposition over every one of these past instances in which the Brotherhood had been

taken before the Court, and been made to stop these very practices, and in which they have come into court and made, in many instances, consent decrees and other involuntary decrees, making them to stop, injunctions; and then thereafter go right back to the same practice again. He was familiar with all of those, and, moreover, in the recent ones which we expect to show to you, he was the person that had charge of the litigation, and directed its performance in each of those places.

Now, we feel that they have a material bearing upon the issue of good faith here, and in showing the whole course of this performance and what has happened, how the thing began, what its system was, how they have been repeatedly told that you cannot do this, and they have come in and said, just as they have said to you, "Now, we are certainly going to stop, we wouldn't think of doing anything like this hereafter," and they have gone right back to it over and over, through two presidents and on innumerable instances and occasions; and in conclusion, we expect to show to you that that has happened in Virginia within the [fol. 21] last year, notwithstanding the magic date of April 1, 1959.

I submit to the Court that if under those circumstances we are able to establish to the Court those things, that the Bar would feel that we should be entitled at the hands of this Court to an injunction directing that they cannot continue those practices in the State of Virginia in the future.

Now one other thing, sir: Mr. Kennedy took the position in his deposition that they were only anxious to find out what they could do, and to be told by proper authority what they could do, and they would abide by it, and the concluding statement in his deposition is, "I would not object to whatever decree the Judge of the Chancery Court of the City of Richmond undertook to enter that would instruct me as to what under the law of Virginia, we can do and what we cannot, and we will abide by it."

Now, the situation is such, if Your Honor please, that this organization, this stupendous, as I say, ran up into millions of dollars—stupendous situation of practically every FELA case, any injury or death arising under that

statute in the entire United States, is by the process of this system.

Whenever those people are members of the Brotherhood of Railroad Trainmen, they are channeled into [fol. 22] sixteen lawyers, or seventeen lawyers, whatever they may happen to be, and they and they alone, undertake and try to handle that litigation.

Now, one other thing that I would like you to bear in mind as you hear this evidence, and that is this: that you will find as it is presented to you, that I have in mind one situation, for example, that is testified to in these depositions where the man who was taken to the lawyer by the runner to sign a contract, and the lawyer says, "I don't know whether or not I want to take this case or not," now that is significant on this aspect of it, because another aspect of the thing you will find Mr. Kennedy testifying that the little cases are to be handled at the lower level, and that the lawyers aren't to be bothered with, and it is only when you get into the place where they are the kind of cases with amputations and real injuries, where you get into the big money, that then is when this system really goes into high gear, and the solicitation gets to be one hundred percent, and they follow people and dog them day and night until the contract gets signed. Now that distinction is sought to be, and will be sought in this evidence, to be shown to you, that that distinction is a statistic. We submit that the distinction is statistical in the sense of how much money can be made [fol. 23] out of it, and it is shown in several of these instances. This is a colossal matter. It involves some 170,000 or 200,000 potential, or the members of potential accident situations in which are channeled and funneled by this method into just sixteen or seventeen lawyers in the United States.

Now, one final and further thing. Mr. Kennedy takes this viewpoint: That the Virginia State Bar is very unjust, very unfair, very unreasonable, because, he says that on account of this suit in which he is not able to find out, because we won't hurry along with it to suit him fast enough, because in this suit he can't find out what he can legally do, notwithstanding that he claims he has been told what he can

do. That on that account, all of his members in the State of Virginia are being deprived of this service, and it is our fault that they aren't getting what they are supposed to be paying for, namely, legal advice, and he admits very freely, that his Legal Aid Department is set up to render legal advice about FELA, and they will appoint these lawyers to give the advice, and if they can get them into their hands to represent them when they undertake to go into court.

Now, that is our case, Your Honor, and I submit that when we get through, I think everything that I have said to you will have been substantiated.

If Your Honor please, I don't know what the situation is [fol. 24] about witnesses, but it would seem to me probably a good idea to request that they be excluded.

The Court: Well, not at this time. They weren't excluded during your opening.

Mr. Bowles, Jr.: What is that, sir?

The Court: They were not excluded during your opening.

Mr. Bowles, Jr.: Well, I am sorry, sir. I had intended to—

The Court: I will hear that motion at the conclusion of Mr. Stallard's statement.

Mr. Bowles, Jr.: I beg your pardon, sir. I didn't realize that distinction, but I had reference to testimony, rather than what I had said.

The Court: You are going to make an opening statement before you put on testimony, I assume?

OPENING STATEMENT BY MR. STALLARD

Mr. Stallard: Yes, Your Honor, the Bill of Complaint here charges not in any specific language, but charges the Brotherhood with unlawful practice of law. It does not point to any statute. I assume it has reference to the integrated Bar and to the canons of ethics established under the statute by the Supreme Court.

The complaint alleges that the Brotherhood had an arrangement with certain regional counsel, that is, that the [fol. 25] regional counsel handled cases of injured members of the Brotherhood. We admitted that that was true prior to April 1, 1959, the magic date.

Now, let's see why we admitted that we had done that in Virginia up until April 1, 1959. Throughout this country, there had been certain lawsuits brought against individual members of the Bar alleging that they were guilty of unethical practice. Finally, a lawsuit was brought against counsel of the regional counsel and general counsel of the Brotherhood in Chicago. The president said that he was going to bring a suit, and did bring a suit, in the Illinois Supreme Court under a statute alleging everything alleged in this court. As a matter of fact, the declaration was almost the same language, or at least, the idea was there.

The Supreme Court of Illinois appointed one of its former justices, Justice Thompson, to be the Commissioner, Special Commissioner, to hear evidence. We alleged that —the exact allegations here—that the Brotherhood had regional counsel throughout the United States. They had regional investigators for the purpose of getting statistical information to handle it before the ICC. If an accident happened, why did it happen? The ICC wanted to know. The railroads wanted to know. But, in gathering that information, it was given also to the lawyers who, as my [fol. 26] adversary says, the investigator, many times pushed the case into the lawyer's lap. We admitted that.

The Supreme Court of Illinois, Justice Thompson, took the evidence, and these are the people participating: The Bar of Chicago; the Bar of Illinois; the American Bar Association; twenty-seven railroads participated with briefs and evidence. The suit was instituted several years ago, to find out what can this Brotherhood do. The Illinois Supreme Court came down with a decision which went into effect in July, '59, but the Brotherhood put it into effect several months before. They said, "You can do the following: You can have your investigators." We expect to prove now that we don't have investigators. We have done away with those investigators. "You can make those reports available to your members. You can use those reports in statistical reasons before the ICC. You can also recommend general and specific lawyers who know something about the handling of cases under the Federal Employers Liability Act, who are scarce; but these things you cannot

do," and these are the things we say we are not doing in Virginia.

They say, "You cannot tell a lawyer that he can charge 25 percent, or any fee. You can't tell him that. You cannot accept any money from that lawyer to maintain your Legal Aid Department, which now is called the Department of [fol. 27] Legal Counsel. You will have to discontinue those things."

We respectfully submit that we are carrying out the Illinois Supreme Court decision, and here is where I am going to challenge my counsel adversary. He said that President Kennedy says he is going to carry out that in Virginia. President Kennedy says he is going to do what this Court tells him to do. He is not doing anything in Virginia. He says he is not doing anything which is illegal; things are lying dormant in Virginia, because we don't know what Virginia wants. Virginia may not accept the decision of Illinois.

Let's go back to the regional counsel; originally they were called, Your Honor, regional counsel, sixteen of them. They were doing exclusive work in damage cases under the Federal Employers Liability Act, and the Safety Appliance Act, but the Brotherhood—and they call it a union, but the name doesn't connote union; ninety percent of its business is as an insurance business. It is a large company. Millions of dollars are involved because railroad men work on very dangerous jobs. Other insurance companies will not insure them. They had lawyers that handled injunction proceedings; proceedings before the Interstate Commerce Commission, then they had the regional counsel who handled only the cases, damage cases. In 1959, they consolidated them. [fol. 28] Now, the regional counsel is no longer. He is legal counsel. He handles all the work of the Brotherhood. If damage cases are referred to him, though improperly, but if they are referred to him, he has the ability and he is the same man who has been representing them for years.

Now, Your Honor, after this case came down, we take the position that the evidence before Your Honor would have to be: Today, what is happening in Virginia today? Not what happened prior to April, 1959. We make admissions

in our Answer we were doing wrong, but I don't think the evidence will show we were in Virginia, but we admitted it, and therefore, we don't think we can go behind that.

Now, certain evidence has been taken here by counsel throughout this country as to what is happening in Illinois, what is happening in California. We are going to show that that evidence doesn't have anything to do with the case in Virginia. The issue in Virginia, is: What is the defendant Brotherhood doing, is it practicing unauthorized law? If it is, it ought to be enjoined in Virginia.

Now, we don't care what happens in other states, because they have different statutes, but we respectfully submit that the evidence will show you we are not practicing law in Virginia; that we have certain constitutional rights, and I would like to refer to my Answer, that this railroad Brother- [fol. 29] hood union, if you want to call it that, or insurance company, that it has certain constitutional rights which were recognized in the Illinois decision. They could have their investigators; that the investigators could make available to their members certain information gathered; that they could also recommend attorneys, generally and specifically, but they could not have any tie-up with attorneys, any 25 percent; they could not take any kick-back, so to speak, to maintain the department.

Now, if we show Your Honor that all we are doing now is what we say is constitutional in the action filed in this court, it is Paragraph 9, Sub-section C, we take this position—

The Court: That is your Answer?

Mr. Stallard: Yes, sir. It is an Amended Answer, Your Honor.

The Court: Wait a minute. Let me get the papers before me. The reference that you have mentioned is—what is the reference that you were going to read from?

Mr. Stallard: It is Paragraph 9, Paragraph 9 of the Answer, adding a paragraph, Sub-section C.

The Court: Yes.

Mr. Stallard: The respondent alleges that it has the legal right, it has the constitutional right to advise with its [fol. 30] members, give them any information it has, and

also to advise lawyers generally or specifically, but not to channel business. I don't think it has that right. That would be our evidence, Your Honor.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Bowles, Jr.: If Your Honor please, as I have previously intimated, a large part of this case is documentary. I think that most of it comes from the call, and has been produced by the defendant in response to those calls, other documentary proof that we wish to show here to the Court. We have, in response to the Court's order, given Mr. Stallard copies with the indication of each one of them, and have told him what they were, and they are all, in our opinion, equally available to him. Those are certified records showing the history of this transaction. Now, Mr. Bowles, III has prepared a seriatim list of these exhibits that we wish to introduce, and I think, sir, if we may be indulged, it might be helpful to you if, at the time of the introduction, we made some brief statement to you as to what that exhibit purports to show, and if that were carried into the record, might form some sort of a kind of index for you as to these exhibits, which number up into the 200's. I am sorry I have to advise the Court of that fact, but it would seem to me that that would be a useful thing to the Court, if Your Honor will agree.

[fol. 31] The Court: Any comment, Mr. Stallard?

Mr. Stallard: Yes, sir, I would object on behalf of the Brotherhood, to the introduction on the ground that the defendant was not a party in many of the cases, and therefore, nothing in the case would be binding upon the defendant. A copy of an opinion is not the best evidence and is not material to the allegations of the plaintiff's Bill of Complaint against the Brotherhood.

Mr. Bowles, Jr.: Well, Your Honor, we hadn't gotten to that yet.

The Court: Your attention is directed to all 200 and some, would it be wiser for you to object to each one as it is offered in evidence, and a statement made as to the purport, or the interpretation of it; would you make your objection then?

Mr. Stallard: I could make objection to each one, Your Honor, but I think it would delay, and if you will let the objection run to all of these opinions, which I understand that he is going to introduce; I didn't know there were going to be 200. I only thought there were going to be some—we have got 10 on one paper, and 7 on another, I believe.

Mr. Bowles, Jr.: I think Mr. Stallard has not comprehended exactly what I had said to Your Honor. Most of [fol. 32] these exhibits that we wish to offer, and up to a certain point, they will all be exhibits that have been produced in response to call from you, and you have produced them here in response to our call, and we would like to present those to the Court at this time, in an orderly fashion, so that the Court will see the relative connection of each to the other. The question that I was addressing myself to was, of course, understanding that at the presentation of any exhibit, you would have the appropriate right to object to it for whatever reason you saw fit, but to save the trouble of the Court having to stop and read each exhibit as it is presented, we would like the privilege of making a very short statement to the Court, what it purports to show; what its relationship is to this case, and what its contents are. Now I don't see what objection there could be.

Mr. Stallard: Your Honor, I thought he had reference to the opinions of various Courts, and I would withdraw my objection.

The Court: At this time?

Mr. Stallard: Yes.

The Court: You withdraw?

Mr. Stallard: Yes.

The Court: The Court suggests that the procedure be adopted as indicated at the bar. The exhibits that are [fol. 33] going to be offered one at a time, counsel for the plaintiff will indicate its bearings and point of view, and read to me such parts of it as are mainly pertinent.

Mr. Bowles, Jr.: Yes, sir.

The Court: I think then, it would be in order for counsel for the defendant to make a brief answer, and read other parts, if he wants.

Mr. Bowles, Jr.: I would think that that would facilitate the performance.

The Court: It may be tedious and slow, but it will be more orderly, and it will help me eventually, because I do hope that the case is going to be fully presented. All the time necessary for the presentation has been accorded by the Court, and will be accorded by the Court. I am hoping that after the presentation of the evidence and the arguments that it will not be necessary, and counsel would not expect me, to take it under advisement and read these documents. Do I make myself clear?

Mr. Bowles, Jr.: That is exactly the purpose that we have in mind. May I illustrate one situation, sir?

The Court: Well, I am in accord with you.

Mr. Bowles, Jr.: All right, sir.

INTRODUCTION OF PLAINTIFF'S EXHIBITS 1 THRU 31 WITH COMMENTS OF BOTH PARTIES

Mr. Bowles, III: If Your Honor please, I would like to introduce in evidence an early copy of the constitution of [fol. 34] the Brotherhood of Railroad Trainmen, which has heretofore been produced by the defendant, as Exhibit No. 1, in response to the first call for production of documents.

Mr. Stallard: No objection, Your Honor.

The Court: No. 1 received, Plaintiff's Exhibit No. 1.

(Plaintiff's Exhibit No. 1, Constitution of the Brotherhood of Railroad Trainmen, was marked and received in evidence.)

Mr. Bowles, Jr.: Now, Your Honor, we have undertaken to give these exhibits numbers in advance, because the cross-references are going to be so confusing, unless we maintain some kind of a system, and if we can presume to request that these be marked in accordance with our designation, we would like it. We have already done it with the first one.

Mr. Bowles, III: I think it will greatly facilitate things, Your Honor, in regard to that exhibit, Your Honor, the pertinent or more pertinent pages would be pages 8 and 9.

The Court: Are all of your exhibit tabs fixed like this?

Mr. Stallard: No.

[fol. 35] Mr. Bowles, III: No, they are not, sir, but those tabs were fixed by the defendant when they were filed in response to the call. That is the exhibit number in response to the first call. I have not attached tabs on them, although I can arrange to do that.

The Court: Well, this is a complete tab, Exhibit No. 1. All that is necessary to put on there is filed with the date, my initial. That would complete the document.

Mr. Bowles, Jr.: I would think so.

The Court: Plaintiff's Exhibit No. 1 is now filed properly identified by the initials of the Judge. Now you wish to make a statement?

Mr. Bowles, III: For Your Honor's convenience, pages 8 and 9 have to do primarily with the authority of the president. Pages 10 and 11 have to do with the authority of the secretary of this organization, whereas on pages 62, 63, 64, and 65 are parts dealing with the establishment of this Legal Aid Department. That is, as you can see, quite a lengthy document, and on my examination of it, I could find that they are the only parts that have reference to the situation we have under discussion here.

The Court: Well, would it not be in order, as suggested, for the purport of that to be—

[fol. 36] Mr. Bowles, III: I can briefly summarize that.

The Court: That is what I want.

Mr. Bowles, Jr.: You have got an exhibit of those things separate.

Mr. Bowles, III: The duties of the president are merely put in to show that the president has the authority to set up such an organization as the Legal Aid Department, and that the president and secretary together have the authority to finish such a setup, and then under a ruling on Section 19 of the constitution which appears on page 62, there is a brief discussion of some difficulty that the Legal Aid Department have in obtaining these reports of injuries in the states that a special circular was sent out requiring that the secretaries of all lodges from this date on, which is in 1930—when we get to that exhibit, I will have the exact date—that the secretaries of all lodges be responsible

for making this report. Prior to that time, apparently it was up to any member of the lodge. Those are the relevant parts, as I see them, of that exhibit.

The Court: These reports have to do with what?

Mr. Bowles, III: These reports have to do with the injuries or death of a member of the lodge, that are sent in by the local lodge to the Legal Aid Department. It is a [fol. 37] report that will be referred to later on as Form LA-1, Your Honor.

The Court: Yes. Now, in brief, those are portions of the duties of the secretary that you wish to call to my attention, I believe. The duty of the president, to which you call attention. Will you repeat that?

Mr. Bowles, III: The duty of the president is not so much a duty, Your Honor, but that he has the authority under the constitution of this organization, in the absence of the meetings of the governing body, to establish such an organization as the Legal Aid Department, or any other organization that he might wish to establish.

The Court: Would you be good enough to point out that passage to me?

Mr. Bowles, Jr.: Would you like to have photostatic excerpts from that thing, Your Honor?

The Court: What is the exhibit number of the paper you have in your hand?

Mr. Bowles, III: Well, it would have to be Exhibit No. 1-A, Your Honor. I had not planned to offer this, but it can be done. These are just excerpts.

Mr. Stallard: I would not object to that, Your Honor. It will just save time, and it is taken from our constitution. [fol. 38] Mr. Bowles, III: These are excerpts taken from the constitution that is in a very general nature of those duties, Your Honor.

The Court: Plaintiff's Exhibit 1-A, photostatic excerpts from the constitution of the defendant, is now introduced, filed, properly identified.

(Plaintiff's Exhibit No. 1-A, excerpts from constitution, was marked and received in evidence.)

Mr. Bowles, III: It would perhaps be easier at this time, Your Honor, to also introduce a later copy of the consti-

tution. It is just a newer one. I can see that there have been no changes in regard to the sections that we are discussing.

The Court: This is marked on the tab Defendant's Exhibit No. 2.

Mr. Bowles, III: That was with the second further call for production of documents.

The Court: You are offering this now in this case, as Plaintiff's Exhibit No. 2?

Mr. Bowles, III: I would prefer it to be Plaintiff's Exhibit No. 1-B, if that is convenient with the Court.

The Court: All right. Plaintiff's Exhibit 1-B.

[fol. 39] (Plaintiff's Exhibit No. 1-B, a constitution of the Brotherhood of Railroad Trainmen, was marked and received in evidence.)

The Court: Do you wish to point out any specific portion of that?

Mr. Stallard: I didn't get that. I got 1-A. What is 1-A?

Mr. Bowles, III: I-A is the photostat of the excerpts.

Mr. Stallard: What is 1-B?

The Court: 1-B is the later constitution.

Mr. Stallard: That is all right.

The Court: Did you have any comments to make on that?

Mr. Bowles, III: Other than those I have already made, Your Honor. I think not.

The Court: You haven't made any on 1-B, have you?

Mr. Bowles, III: That it is substantially the same.

The Court: I see.

Mr. Bowles, III: I would like to offer into evidence a report of A. F. Whitney, who was president of this Brother-
[fol. 40] hood, written to him by Mr. T. J. McGrath, who was general counsel of this Brotherhood, dated July 24, 1929, which is a pamphlet consisting of 16 pages describing the situation in West Virginia, and was heretofore identified as Defendant's Exhibit 3-B, in response to the second further call for production of documents, and I would like to have this marked Plaintiff's Exhibit No. 2.

(Plaintiff's Exhibit No. 2, a report, was marked and received in evidence.)

The Court: You are now going to comment on this, I suppose?

Mr. Bowles, III: Yes, sir, very briefly.

The Court: Plaintiff's Exhibit No. 2, filed and identified, the report of T. F. Whitney.

Mr. Bowles, III: That, sir, is a report made by Mr. McGrath, who was general counsel of the Brotherhood prior to the establishment of the Legal Aid Department, and it purports to show the difficulty that members of the Brotherhood were having, in obtaining lawyers and adequate legal advice in regard to injuries sustained primarily in the State of West Virginia. They seem to pick that as the principal trouble spot, from their standpoint, in this country.

The Court: Did you wish to read any excerpts from this [fol. 41] to me?

Mr. Bowles, III: I don't think that that would be beneficial, Your Honor. It is merely a list. It goes and lists each individual man's case and what happened to him, how they felt he was mistreated, and what-not. It is merely a background material.

The Court: Did you wish to make any comment?

Mr. Stallard: No, sir, I do not. I might say it only gives a background of why this department set up a regional in 1930.

The Court: 1929.

Mr. Stallard: It came along in '30, just a preliminary report. I might say, Your Honor, that that does show that the members were being abused, so to speak, and could not hire lawyers, that lawyers would not take their cases, that the railroad employed most of the good lawyers, and they could not find anybody to take their case. Therefore, the railroad brothers had set this department up as a defense against the railroads for the members were being very badly treated.

Mr. Bowles, Jr.: For a defense against the lawyers that they were getting at that time is what we got out of that.

Mr. Bowles, III: It also mentions in there, Your Honor, [fol. 42] that West Virginia had in 1928, I believe, passed an anti-solicitations statute and that because of that, that certain of their members were not being afforded the op-

portunity of meeting counsel then as they had in the past. I would like to introduce next, Your Honor, special circular No. W-24, which is dated January 22, 1930, consisting of 4 pages and purporting to be a referendum questionnaire with an attached ballot on the general subject of: "Shall a Legal Aid Department be established?" Now, this was heretofore filed by the defendant as part of Exhibit 2 in response to the first call for production of documents, and I would like the Court to mark that as Plaintiff's Exhibit No. 3.

The Court: Special circular No. W-24 identified and filed as Plaintiff's Exhibit No. 3.

(Plaintiff's Exhibit No. 3, a pamphlet, was marked and received in evidence.)

Mr. Bowles, III: Now, briefly, Your Honor, the contents of that document, beginning with a brief discussion of FELA, it was passed in 1910. It discusses a resolution that was adopted by one of the governing boards, to set this plan in motion, and then the details of the plan. Generally, the bureau will be established where the injured member may apply as to information as to his legal rights, and that [fol. 43] the president will supervise this plan; that the bureau itself will not negotiate settlement, but that certain regional counsel will be appointed throughout the country, and that the members can rely upon these lawyers hired; that their fee will not exceed 20 percent, and the lawyer is to advance all necessary expenses, to help the fellow out in his situation; and the control, however, is to be retained by the plaintiff as to possible settlement of his case without suit being filed, because there seems to be some practice by the railroads that where a suit is filed by a member, he has difficulty getting a job on any other railroad after that point; so that provision was put in there.

The Court: You are speaking of No. 3 then?

Mr. Bowles, III: Yes, sir, Exhibit No. 3.

The Court: Do you have any comment?

Mr. Stallard: No comment.

Mr. Bowles, III: I would like next to introduce the special circular No. W-28, dated April 15, 1930, which con-

sists of 4 pages, purporting to announce the establishment of the Legal Aid Department and outlining the plan in detail. This was heretofore filed as Exhibit No. 2, or part of Exhibit No. 2 in response to the first call, and I would like to have the Court mark this as the Plaintiff's Exhibit No. 4.

The Court: Special circular No. W-28 identified and filed [fol. 44] as Plaintiff's Exhibit No. 4.

(Plaintiff's Exhibit No. 4, W-28 form, was marked and received in evidence.)

Mr. Bowles, III: Now, this document, Your Honor, shows what the vote was on this referendum questionnaire, which was Exhibit 3, and goes into more detail in discussing what the members can spend in the establishment of this program. I don't think it is necessary to go into this in detail at this time. You will pardon my delay, Your Honor, but Mr. Stallard seems to be over-anxious when he staples things together.

I would like next to introduce a copy of the Rules and Regulations governing the relationships of regional counsel and the Brotherhood of Railway Trainmen, Legal Aid Department, which consists of 3 pages, which purports to be the contract or the form of a contract that was entered into between regional counsel and the Legal Aid Department. This also was heretofore filed by the defendant as part of Exhibit 3, in response to the first call for production of documents, and I would like, if the Court would, that it be marked Plaintiff's Exhibit No. 5.

The Court: Identified, so marked, and filed.

(Plaintiff's Exhibit No. 5, a copy of the Rules and Regu-[fol. 45] lations in regard to regional counsel and the Brotherhood of Railroad Trainmen, was marked and received in evidence.)

Mr. Bowles, III: Now, just briefly summarizing this, Your Honor, it begins to the effect that lawyers have been selected in various railroad centers, and were selected with a view to rendering service officially and convenient to the members in the total membership in that area, so

as to give reasonable assurance to the lawyer of a sufficient volume to warrant the rendering of proper service on the compensation agreed upon, and that articles will be published in the *Trainmen's Journal*, which was at that time, a monthly journal. They now have a weekly journal, as I understand about the Legal Aid Department; how it would work, and that each month as the journal came out, there would be a page or part of a page devoted to a listing of regional counsel, and where they could be found and what territories they were assigned to.

The basic plan as set out is that when an injury occurs, that a report will be made to the department and the department would send a copy of this report to regional counsel and if they felt it necessary, send a regional investigator. This was only done, as you will note in there, Your Honor, I believe at the top of the second page, or near [fol. 46] to it, that they apparently are only interested in major injury cases. They are not interested in the small or more trivial ones.

The Court: Now, what is that you said, top of the page?

Mr. Bowles, III: Excuse me, it is on the first page at the beginning of the fourth paragraph.

The Court: Yes, I see it there. It is also near the bottom of page 2.

Mr. Bowles, III: And it says later on, and I am just paraphrasing, that where the member is unable to make a settlement directly with the railroad, he will be referred to the regional attorneys and the contracts will be made; that regional attorneys are required to report all cases handled by them, to the Brotherhood's Legal Aid Department, and again, that the members there have control over settlement of their cases without filing suit or they could not work again with the railroad. There is also a statement in there that there is no requirement that a member use the regional counsel assigned to his particular area, but that he may use any of them.

Mr. Stallard: I would like to comment on that, Your Honor.

The Court: Yes.

Mr. Stallard: It will be shown that the small [fol. 47] cases that my adversary refers to, are grievances,

where a man might get his finger mashed and he and his superior or grievance committee could settle it; maybe he is off one or two days from the railroad. It is not thought that counsel would be really under the grievance clause; they can settle it direct by hearing of the grievance committee. They call him a grievor. He goes with the man and the railroad pays for one or two days he is off. He has mashed his finger, and he is all right, and he is back to work, so it was not set up to ignore these little things. The Brotherhood is interested, but it was thought that it would be insignificant; it would cost too much to go out and see a lawyer, because it really might involve just two days' pay, maybe twelve or fifteen dollars. Now, the other comment I want to make, this contract provides that the member can employ any counsel he wants to. He does not have to go to counsel who is called regional counsel for the Brotherhood. He can go to any counsel, and the only reason that the Brotherhood would recommend their counsel, he is very well schooled in the Federal Employers Liability Act and the Safety Appliance Act, and general lawyers are not specialized.

The Court: Now, Mr. Stallard, you are not trying to justify what we may call the setup under this?

Mr. Stallard: No, I am only replying to his expla-[fol. 48] nation. I don't object to it at all. I am not trying to even justify it, because I have said in my Answer, that this is wrong. The Illinois Court so finds, and if Your Honor felt that you should enter an injunction, we take the position that the injunction should be taken in consideration that they can't do these things, but they could have certain constitutional rights, which Your Honor could not affect by your decree, but this clearly is wrong. We have admitted it in our Answer, and when you put on all of this preliminary, we say that the conclusion was wrong. It was absolutely unethical, in my opinion, but we say we are no longer doing it since April, since the Illinois Court told us we could not do it.

Mr. Bowles, Jr.: May I make one further statement, sir?

The Court: Yes.

Mr. Bowles, Jr.: The inference which we submit will be appropriate to be drawn from this background at the appropriate time, when we show you other things, goes further than the very meritorious statement that they are not limited by any relations of the Brotherhood controlling of its members, that they must use these counsel, nor to the proposition particularly, that it is obviously proper to handle these small cases in the grievance committees, [fol. 49] and so forth, and not bother with lawyers; all of which certainly is obviously proper and appropriate, but, as the plan got into operation, what we intend to show to you is that the further inference goes on that statement as to how it developed that from the angle of the relationship of the Legal Aid Department supported by contributions from the regional counsel, that that statement became interpreted, "Don't let's bother anything except with the big money cases," and that is what that background developed into, and that is what it is today.

Mr. Bowles, III: I would like next to introduce, Your Honor, a form entitled LA-1, consisting of one page, which purports to be the form now used by the lodges to report the various accidents of a member killed or injured, to the Legal Aid Department, or the now Department of Legal Counsel, and I would like to have that marked Exhibit 6, if I may, Your Honor.

The Court: Now, this is a form for a report from the secretary of the local lodge?

Mr. Bowles, III: Local lodge.

The Court: Made to the Legal Aid Department?

Mr. Bowles, III: That is correct.

The Court: You wish this to be Plaintiff's Exhibit No. 6? It is identified and so filed. I will ask you to wait a minute, please.

[fol. 50] (Plaintiff's Exhibit No. 6, LA-1 form, was marked and received in evidence.)

Mr. Bowles, III: That form, Your Honor, had been previously produced as part of Exhibit 3-C in response to the first call. I would like next to introduce another copy of form LA-1, which again consists of one page, and pur-

ported to be the form actually used in 1930, and this had heretofore been filed by the defendant as Exhibit 1-B, in response to the first call for production of documents. I would like this, if I may, Your Honor, to be marked Exhibit 6-A.

The Court: What is the difference between them?

Mr. Bowles, III: Apparently none that I can see, Your Honor. The form seems to be identical, the one used in 1930 and the one used today.

The Court: Identified and filed as Plaintiff's Exhibit 6-A.

(Plaintiff's Exhibit No. 6-A, LA-1 form, was marked and received in evidence.)

The Court: Now we will take a recess until twelve o'clock. The Court will proceed in these hours: From 10 until 1, with a brief recess; from 2:15 until 5:00 with a brief recess. If we adhere to those hours, without expand-
[fol. 51] ing them, we will make considerable progress. Meeting, however, at the 10 o'clock hour is subject to this, however: There are one or two days perhaps I shall have other motions that I feel should be handled at 10 o'clock, and we will start this case at 10:30 or later.

Mr. Bowles, Jr.: I think, sir, at this time, it may be appropriate for me to suggest to the Court that I am on call for the first case in the Supreme Court on Wednesday, and if I may ask the indulgence of the Court to do either one of two things, but one I would prefer, is that if we can so arrange the presentation of this evidence, and you are doing what is going along here now, if you would just excuse me, Mr. Bowles, III could just carry on; if you are at a stage where you would prefer my presence, I will have to ask you adjourn for long enough for me to get over there and argue that case.

The Court: When do you wish to be excused? We are going to go on a tedious and long drawn-out expedition. It appears that this will take us through Wednesday.

Mr. Bowles, Jr.: Oh, no doubt, sir.

The Court: Do you desire to be present during this particular thing?

Mr. Bowles, Jr.: During this kind of thing, if that is the way we could regulate it, I would not.

[fol. 52] The Court: You wish, then, to be excused from now?

Mr. Bowles, Jr.: No, at 9:30 until I get through over there on Wednesday morning. I will be here until Wednesday morning.

Mr. Stallard: That is perfectly all right.

The Court: I will excuse you when you want to be excused. I will look for you back thereafter.

Mr. Bowles, Jr.: We are trying to do this in an orderly fashion, sir, but I foresee that we are going to have to interrupt sometimes on account of the convenience of other people, that we can't get here to put certain so-called out-of-town, and it might be one of those out-of-town, is what I had in mind.

The Court: I want you to adhere to those hours that I mentioned.

Mr. Bowles, Jr.: Yes, sir. I may ask, if Your Honor please, too, the pressure I have been under, it makes it necessary to do so.

(Recess.)

Mr. Bowles, III: I would like next to file, if I may, another copy of form LA-1, which was previously filed as Exhibit 6 and 6-A. Now, this is a form that was actually [fol. 53] used, and again, consisting of one page, and was heretofore furnished to us as part of Exhibit 1-B, in response to the second further calling, and I would like that marked Exhibit 6-B, if I may, Your Honor.

The Court: Filed as Plaintiff's Exhibit 6-B. The date, if I read it correctly, October 9, 1930.

Mr. Bowles, III: That is correct, Your Honor.

(Plaintiff's Exhibit No. 6-B, LA-1, was marked and received in evidence.)

Mr. Bowles, III: You will note, Your Honor, that this is the report by the secretary of local lodge No. 170 to Mr. E. L. Harrigan and deputy president of the Brotherhood at Cleveland, Ohio, reporting the injury to a man, F. V.

Speck, at Ashland, Nebraska. You will also note that the secretary of the lodge sent a copy of this to Davis, Michel, Yaeger & McGinley, regional counsel. Now, as we will show later on, they were regional counsel, I believe, in Minneapolis. They were also the first regional counsel ever appointed by this Brotherhood, and the same firm, but with slightly different changes in the personnel, was the subject of the injunction suit in Nebraska in 1958.

I would like next to introduce form FLA-2, which consists of two pages, which purports to be the form sent by [fol. 54] the Legal Aid Department to the injured member for his further use in describing his accident and to be returned to the Legal Aid Department, and this was heretofore filed as part of Exhibit 3-C, in response to the first call, and I would like that marked Exhibit No. 7, Your Honor.

The Court: Does there appear to be two copies of this?

Mr. Bowles, III: No, sir, I believe that is the first and second page of it.

The Court: One is the report of the accident, and the other is the report of death?

Mr. Bowles, III: Excuse me, sir. I didn't realize they were on the back. I am sorry if I have confused you, sir.

The Court: Plaintiff's exhibit 7 is filed, having to do with a case of accident.

(Plaintiff's Exhibit No. 7, FLA-2 form, was marked and received in evidence.)

Mr. Bowles, III: Now, the purpose of this report which, incidentally, is just one page, consisting of the front and the back, is for use by the injured member in reporting more details about his accident to the Legal Aid Department, so that they may advise him as to what [fol. 55] are his rights under the Federal Employees Liability Act, and the Safety Appliance Act. I would like now to file form FLA-2-D.

Mr. Stallard: Well, Your Honor please, I would like to comment on that.

Mr. Bowles, III: Excuse me.

Mr. Stallard: That is a deduction of counsel, what they could inform him of his rights. It is the position of the

Brotherhood, and it has been shown by the president in his deposition, that all information on accidents was used in Washington, before the ICC as statistics to show, to improve the Safety Appliance Act, and other safety acts enacted by Congress, and it was not for the purpose of counsel, as deducted; it was for the purpose of advising him of his rights by the—the department, certainly. The department couldn't advise him of his rights. They couldn't practice law.

Mr. Bowles, III: Which we intend to prove later on, Your Honor, that at the time that this Legal Aid Department was established on May 1, 1930, that there did not exist this Statistical Department. It was not formed until a year later, therefore, it is hardly conceivable that this form could have been used in 1930 for statistical purposes. It was not used for that purpose until 1931.

The Court: Exhibit No. 7 states in the first two or three printed lines—

[fol. 56] Mr. Bowles, III: It is right in there.

The Court: "This information contained will be used by our legal counsel as a basis for his opinion as to your right under the law."

Mr. Stallard: That is correct.

The Court: That is No. 7.

Mr. Stallard: That is correct.

Mr. Bowles, Jr.: Now, if Your Honor please, may I further say at that point, that we expect to show to you at the time we consider the present president's deposition, Mr. Kennedy, taken June 1 of this year, Mr. Kennedy now contends that they now have the right even under the Illinois decision, to advise through their legal counsel or through the Legal Aid Department each of their members what are their legal rights, with respect to the FELA and the prosecution of their injury or death claims.

The Court: That finishes your comment on No. 7?

Mr. Bowles, III: Yes, sir.

The next document I would like to introduce is form FLA-2-D, consisting of front and back of one page for use by the window or personal representative in reporting similar information as on Exhibit 7, to the Legal Aid

Department so that they may advise her or the personal representative of their rights under the FELA, and the [fol. 57] Safety Appliance Act, and that was previously filed as part of Exhibit 3-C, in response to the first call, and I would like that marked Exhibit 8, if I may.

The Court: 7, or 8?

Mr. Bowles, III: 8, Your Honor.

The Court: It is marked 8, identified and filed.

(Plaintiff's Exhibit No. 8, an FLA-2 form, was marked and received in evidence.)

Mr. Bowles, III: Incidentally, Your Honor, these forms introduced as Exhibits 6, 6-A, 6-B, 7, and Exhibit 8, are now in use today, and were given to us as the forms now in use today. I would like to now introduce a form of the Brotherhood of Railroad Trainmen for the purpose of reporting accidents involving slack action in trains of a large number of cars. I have heard this referred to as either a hundred, or seventy cars, I don't know which, but this is a special form for the secretary of the lodge to report to the Brotherhood, accidents to members arising under those circumstances. Now, this was heretofore filed also as part of Exhibit 3-C, in response to the first call, and I would like that marked as Exhibit 9, if you please, Your Honor.

The Court: Plaintiff's Exhibit 9.

[fol. 58] (Plaintiff's Exhibit No. 9, a slack action report form, was marked and received in evidence.)

Mr. Bowles, III: I would like next to introduce, Your Honor, special circular No. W-32, dated August 15, 1930, which was sent to all of the secretaries of the local lodges, designating the secretary as the person to make these reports of these accidents, and this was heretofore filed as part of Exhibit 1-A, in response to the second further call, and I would like it marked Exhibit 10.

The Court: Dated August 15, 1930, identified and filed as Plaintiff's Exhibit 10.

(Plaintiff's Exhibit No. 10, special circular W-32 form, dated August 15, 1930, was marked and received in evidence.)

The Court: Now, may we pause just a minute?

Mr. Bowles, III: Yes, sir, Your Honor.

The Court: Just to make some estimate roughly, this has taken us just an hour to get 10. I would estimate from that, if there are 200, it is going to take us 20 hours.

Mr. Bowles, III: No, sir.

Mr. Bowles, Jr.: It won't do that, because some of these, [fol. 59] if Your Honor please, when we get to them, are in batches of 10, 15, and 20, a series of correspondence that have been produced here between various people that are pertinent, which can be pointed out to you very promptly, and very easily, which will get you over 134, I think, in about ten minutes.

The Court: Just one further minute, please.

Mr. Bowles, Jr.: I might say that our plan is to be through with this this afternoon, halfway, at least.

The Court: All right, Mr. Bowles, III?

Mr. Bowles, III: If you will give me one moment, special circular W-32 is that form referred to in the ruling on Section 19 of the constitution which was filed as Exhibit 1. This was the form that was sent to the secretaries, stating that "previously no specific person was designated to make these reports, and we have had trouble getting these reports in. Now you, the secretary of the local lodge, are designated to make them."

Now, did I introduce that, Your Honor?

The Court: It came up before in the way of comment. I was going to say, special W-24.

Mr. Bowles, III: It should be offered as Exhibit 10. That was the same form, it is just a copy of it.

The Court: This is special circular No. W-32.

Mr. Bowles, III: I just got confused with my [fol. 60] own copies, and the Court's copies. I am sorry.

The Court: This is Exhibit No. 10.

Mr. Bowles, III: I would next like to introduce a blank card entitled "Regional Investigator's Commission," bearing the date of 1961, reportedly to be the type of card carried by all the regional investigators from the inception of the Legal Aid Department to the present, and this was heretofore furnished as Exhibit 7, in response to the second further call, and I would like this to be marked as Exhibit No. 11.

The Court: Marked Plaintiff's Exhibit 11, identified, and filed.

(Plaintiff's Exhibit No. 11, a carrying card, was marked and received in evidence.)

Mr. Bowles, III: That, sir, is the card carried by these regional investigators, and you will note that they are appointed directly by the president of the Brotherhood.

Mr. Bowles, Jr.: If I may add to it, Your Honor, that is the card also carried by the local secretaries of the lodges and the chairmen and other people who, under W-32, are authorized to make these investigations and report back to the counsel.

Mr. Stallard: Your Honor, the defendant expects to [fol. 61] show that none of those cards were ever carried by the secretaries in Virginia. Virginia never had those cards.

The Court: Well, the secretaries—what about the investigators?

Mr. Stallard: Well, investigators—we expect to show that there are no more investigators. They were all abolished about two years ago. We don't have investigators any more. They had them at one time.

The Court: Don't have them now?

Mr. Stallard: No, sir, they have four in the home office which are really the chief clerk, he is an investigator, and two girls and one other man in the office; four people in the central office in Cleveland, but at one time they had investigators, Your Honor, all over the country. They were assigned apparently to regions, regional investigators.

The Court: This is over-dated 1961, had you noticed that?

Mr. Stallard: No, sir, I had not noticed that at all, but I understand from the president, the evidence will show that he supposedly appointed, and he testified that he appointed sometimes secretaries in other parts of the country, to investigate a case. They sent in a perfunctory notice of the injury and the date and so on, but if he [fol. 62] wanted some pictures taken, a real investigation,

he would designate a local secretary, and he would have one of these cards. We expect the evidence to show that none of these cards have ever been used in Virginia by any secretary. He has never been designated.

The Court: But if the occasion arose, you plan to use that card in Virginia?

Mr. Stallard: Yes, sir, if that would happen.

The Court: You see, this case already has developed two possible phases. One, to enjoin what is actually going on now in Virginia, and for a fact, the other is to enjoin actions that the evidence discloses are reasonably anticipated.

Mr. Bowles, Jr.: That is correct, sir. Now, on the point of that comment, sir, I wish to ask the Court to bear in mind that at the appropriate stage, when we get President Kennedy's deposition, which was taken in June of this year, in Cleveland, Ohio, that we will show by that deposition that what Mr. Stallard has just said is exactly contrary to what the fact is now. On the other hand, the new change, as you will see from his testimony, is that when they abolished these so-called regional secretaries, or, rather, reduced them from a great number down to a few, they transferred by presidential order all of the functions [fol. 63] of the old regional investigators on to the secretary of the local lodge, who now carries out those same functions and carries that card. Now that is the testimony already given, so we contend that so far as the carrying out of this plan is concerned and so far as the furtherance of the original system, that it has just changed its color from black to slightly dark, very dark grey, and the method of operating is that the old regional investigator who was the bird dog that hopped right quick on these accidents, is now the secretary of the local lodge, who carries that card, to identify himself and it is the duty of that secretary to hop on it quick and report it and channel it to the regional counsel. Now that is Mr. Kennedy's testimony, and I didn't want you not to have it in mind. That is what we expect to show in regard to that card, and that every one of those secretaries do carry that card, issued by him.

The Court: If you have further comment, Mr. Stallard?

Mr. Stallard: Nothing, other than I expect to show by the secretary of Virginia that they have never seen a card like that, and they don't know anything about it. I have interviewed them, and they will get on the stand. They never saw them. Now, what has taken place other places, that evidence has already been taken, and that will [fol. 64] stand up for itself.

Mr. Bowles, III: Your Honor, I would next like to introduce the president's Annual Report, 1930, that is President A. F. Whitney, which consists of pages AAA-262 through AAA-267, being a report on the early workings and establishment of the Legal Aid Department, and was heretofore filed as part of Exhibit 2. This I would like to have marked as Exhibit No. 12, if Your Honor please.

The Court: Exhibit No. 12, identified and filed.

(Plaintiff's Exhibit No. 12, a report form, was marked and filed in evidence.)

Mr. Bowles, III: Before commenting on that, Your Honor, when that was originally produced, they left off one page. If you will recall, we had to ask them for the last page, and I would like to introduce page AAA-267, and -268.

The Court: 267 is here.

Mr. Bowles, III: Well, that is back and front, Your Honor. I really just want to introduce -268, but included with it is -267.

The Court: I see.

Mr. Bowles, III: That was produced as Exhibit [fol. 65] 3-E, in response to the second call, and I would like that marked Exhibit 12-A. I think that would show that the two go together.

(Plaintiff's Exhibit No. 12-A, report form, page AAA-268, was marked and received in evidence.)

The Court: Plaintiff's Exhibit No. 12-A identified and filed.

Mr. Bowles, III: With these two exhibits, it is reviewed how this department was set up, through the referendum questionnaire which has previously been introduced, and

briefly reviews its workings at that time, and sets forth the plan in a little more detail than we had it before, in that we go into now that a certain percentage of the regional counsel fee will be returned to the Brotherhood to pay for the operation of the Legal Aid Department. Other than that, the history related in that has been discussed before.

In another report, which I will file later, it refers to another portion of the president's report which is a report on the workings of the Legal Aid Bureau, made in 1930, consisting of pages AAA-553 through AAA-591, which is a detailed report by Mr. McGrath, the general counsel, who was in charge of the Legal Aid Department, to President Whitney, going through every case that had been handled [fol. 66] by the Brotherhood, and the result, and the outcome of it, and I would like to file that as Exhibit 13. They are far too numerous, Your Honor, to comment on at this time. That had heretofore been filed as Exhibit 3-F, in response to the second call.

The Court: Second further call?

Mr. Bowles, III: Second further call.

The Court: Plaintiff's Exhibit 13 is now identified and filed.

(Plaintiff's Exhibit No. 13, a report, was marked and received in evidence.)

Mr. Bowles, III: I would like now, to file what is offered in evidence, excerpts from the Board of Trustees and Annual Report of 1930. It was a brief history of the establishment of the Legal Aid Department, and this was heretofore filed as part of Exhibit 2 in response to the first call for production of documents, and I would like that that be marked as Exhibit 14, Your Honor.

The Court: Plaintiff's Exhibit No. 14 now identified and filed.

(Plaintiff's Exhibit No. 14, 1930 Annual Report, was marked and received in evidence.)

[fol. 67] Mr. Bowles, III: That, again, is representative and cumulative of the same history, the establishment of this bureau.

I would like to offer the next proceedings of the Sixth Triannual Convention, pages 572 through 575, purporting to be the ratification by Triannual Convention of the Brotherhood of the agents of President Whitney and the then secretary, in taking money from the general fund of the Brotherhood to get the Legal Aid Department initially established, before the 5 percent started coming in from the lawyers. This was previously filed as Exhibit 2 in response to the first call, and I would like that marked Exhibit 15, if Your Honor please.

The Court: Plaintiff's Exhibit No. 15 identified and now filed.

(Plaintiff's Exhibit No. 15, a report form, was marked and received in evidence.)

Mr. Bowles, III: I would like next to offer in evidence, Your Honor, part of the president's Annual Report of 1931, consisting of pages A-269 through A-298, relating to the, if Your Honor please, furnishings, of the Legal Aid Department in that year; in other words, between '30 and '31, heretofore filed by the defendant as part of Exhibit 2 [fol. 68] in response to the first call for production of documents. I would like that marked Plaintiff's Exhibit 16, if I may, Your Honor.

(Plaintiff's Exhibit No. 16, Annual Report form, was marked and received in evidence.)

The Court: Plaintiff's Exhibit 16 identified and filed.

Mr. Bowles, III: I would like next, Your Honor, to offer as Exhibit 17, the first case involving the scrutiny of this Legal Aid Department and the plans set up by a court. I would like to offer the case of *In re: Petition of Rule 28* consisting of six separate documents, the final order of the Cuyahoga Common Pleas Court, dated June 17, 1933, the opinion of May 8, 1933; the opinion in the *Nisi Prius* series report which is, incidentally, New Series 291, March 23, 1932, and then the Respondent's Bill of Exceptions, in Volume 1, Volume 2, and Volume 3, exhibits only.

Mr. Stallard: Your Honor, I object to that; that has not been identified by anybody in this case other than counsel, who has made reference to it. I object to it on the ground

it does not in any way bind the defendant here in this case, nor is it material or pertinent to the issue in this case. No witness identified it, counsel just made the representation. [fol. 69] I have not examined it at all. I would like to see it, however, and see what it is.

Mr. Bowles, Jr.: You want me to reply in answer?

The Court: He says he wants to examine it.

Mr. Bowles, Jr.: Oh.

Mr. Stallard: I want to object to it, the introduction of these exhibits which I understand you have offered as Plaintiff's Exhibit 18.

Mr. Bowles, III: 17.

Mr. Stallard: 17, as being immaterial and irrelevant to the issues in this case, and have no connection whatsoever with my client, and they are not the best evidence, because they are photostat copies of something that took place in Cleveland, Ohio.

Mr. Bowles, III: It contains also the testimony of Mr. T. J. McGrath, who was general counsel and ran this Legal Aid Bureau. It contains the testimony of Mr. E. L. Harrigan, who took over after Mr. McGrath, and ran it up until 1954, 1947, excuse me, and it contains a myriad of cases involving solicitation, fee-splitting, and just exactly the questions that we are talking about now. We intend to show that in spite of this decision, and the decisions following it, that as his Answer admits, the same thing kept on.

Mr. Stallard: Your Honor, I want the record to [fol. 70] show that I object to the introduction of this exhibit on the ground that my client, the defendant, the Brotherhood of Railroad Trainmen, was not a party defendant in that case, and counsel informs us in open court that the president of the Railroad Brothers did testify, but the introduction of certain evidence might have been objected to on the sound ground in Virginia, but some lawyer in Ohio might not have objected to it. Therefore, I object to it as being not the best evidence, not subject to cross-examination. I could not cross-examine that document.

Mr. Bowles, III: Nor could we cross-examine; Mr. Whitney is deceased.

Mr. Bowles, Jr.: Now, Your Honor, there are some other things that should be said to you about that. Mr. Kennedy, as I already said to you, is the president of this Brotherhood. Mr. Kennedy's deposition was taken by us on June 1, 1961, in Cleveland. We have already shown to you under the constitution and the Rules and Regulations, that Mr. Kennedy is the sole person and authority, and what-not, to run this Legal Aid Department. Now, Mr. Kennedy was questioned about this document that is now before you, all of it, and what every one of these details of it on this ground: That as president of this department, running it, what investigation had he made as to the best [fol. 71] history and past record of this plan, as it had been operated. He said he was thoroughly familiar with that document. He knew all about it. He knew what the decision of the Court was. We asked him further now, "Did you know the lawyers that were involved in here and that were enjoined and on your theory that you have investigated before you appoint them, have you investigated their reputation for character, whether they had ever been enjoined, whether they had ever done these things before, on integrity, and so forth, and so on, that you say is your standard for appointing regional counsel, and if you know about this case and their connection with this case?"

He said, "Yes, I did."

"Now you know all about this, Mr. Kennedy." Now, reappoint them when you became president?"

And he said, "Yes, I did."

"Now you know all about this, Mr. Kennedy." Now, the most interesting feature of this little situation right here now, however, is that Mr. Stallard, who was present in Cleveland, objected strenuously to me examining Mr. Kennedy, about his familiarity and knowledge with that exact record that you are looking at, and the basis of his objection was the record, itself, was the best evidence. That is why I brought it.

Mr. Stallard: Now, Your Honor, I would like to point [fol. 72] out that you might examine a witness on some matter, but I can't introduce an exhibit because the exhibit cannot be cross-examined, and it is not the best evi-

dence in the case, and I would like counsel to point out, Your Honor, where President Kennedy from his testimony, identified this and said he knew all about it.

Mr. Bowles, Jr.: May we digress and do that, sir?

The Court: May we be off the record a minute?

(Discussion off the record.)

Mr. Bowles, Jr.: I think that the record should show that he does not want to object to it, on the basis of authentication.

The Court: But he just said he did on that.

Mr. Bowles, Jr.: That is why I wanted the record to show now that he doesn't.

Mr. Stallard: I don't object to the record being properly authenticated, but I could not cross-examine that record, and that record wasn't against my client at all, and it would be unfair to introduce it against my client, some record in another case, where they were not a party to at all, because it is not the best evidence.

The Court: Excuse me a minute. I want to get clear [fol. 73] what has happened up to this point. The exhibit now offered consists of two newspapers, and three multi-volumes, the first two of which we now learn are really transcripts of what took place, the evidence before the Court, and the third are exhibits that were filed in the case. Now we have a copy of the record here, filed under the statute. Let me understand first, do you object to the introduction of this proposed exhibit on the ground that it is not properly authenticated?

Mr. Stallard: No, sir. It may be authenticated, but it is not material and relevant to the issue in this case. It might have come down perfectly regular, as being the authenticated copy from the Court, but still that would not make it material and relevant to the issues in this case, because that proceeding was not against the Brotherhood, and the Brotherhood will not be bound by anything in that case.

The Court: The Brotherhood officers, I understand, testified in this case.

Mr. Bowles, Jr.: All of whom are now dead, Your Honor.

The Court: But they testified.

Mr. Bowles, III: They testified, all of the principal officers who had anything to do with the Legal Aid Department testified.

[fol. 74] Mr. Stallard: Your Honor, but I would not have the opportunity to cross-examine them. They may have made—

The Court: You wouldn't cross-examine them anyhow. They would be examined by these gentlemen as adverse witnesses. Let me ask this: This is one of the things that is readily accessible to counsel for the defendant as to you, did you give him a reference to it?

Mr. Bowles, Jr.: I did, sir.

The Court: Pursuant to the order?

Mr. Bowles, Jr.: That's right, sir.

The Court: And he had an opportunity to examine it, if he wished, in advance?

Mr. Bowles, Jr.: That's right, sir.

Mr. Bowles, III: That is correct.

The Court: This proceeding by the Bar Association is a firm with lawyers who were acting as regional counsel?

Mr. Bowles, III: They were the second regional counsel appointed, and one member of the firm, Mr. R. B. Newcomb, and in the company of Mr. T. J. McGrath, devised this plan.

The Court: Just one minute. Now, I—do you want to elaborate your objections further?

[fol. 75] Mr. Stallard: No, sir, I just wanted to say that this is not material and it is not the best evidence, because it is an exhibit and opinion.

The Court: Not the best evidence of what?

Mr. Stallard: In this case.

The Court: The best evidence of what?

Mr. Stallard: Best evidence would be those people coming in and getting on the stand and testifying.

The Court: Well, they are dead.

Mr. Stallard: I know they are dead, therefore, I don't have a right as counsel for the defendant, to cross-examine them.

The Court: Well, if they were living, they are the principal officers.

Mr. Stallard: They were.

The Court: Of the Brotherhood.

Mr. Stallard: They were, many years ago, the principal officers, but not today.

Mr. Bowles, Jr.: Up until 1949, as far as President Whitney is concerned.

The Court: I find, in glancing through the order of Virginia 7, 1933, I find that that Court, for what it may be worth, find that the Legal Aid Department is a branch of the Brotherhood of Railroad Trainmen, and that the re-
[fol. 76] spondent for Newcomb, Newcomb & Nord is one of the regional counsel for an inevitable part of the Legal Aid Department under a plan which is nationwide in its scope. The objection to the admission of this is overruled, and your exception may be noted.

Mr. Stallard: All right. The record will show my exception.

Mr. Bowles, Jr.: Your Honor, I merely put into the record at this time, quoting from page 119 of the deposition of Mr. Kennedy, as president, which was taken in Cleveland, on June 1, 1961, the following statement by Mr. Stallard, in connection with my examination of Mr. Kennedy of this specific record, which Mr. Kennedy said he was thoroughly familiar with, and this was Mr. Stallard's objection:

"Counsel for the defendant objects to questioning the witness on these cases, of course. It is a question of law, what happened in those cases, and the cases can be introduced, and that would be the best evidence."

That is why I brought them.

Mr. Stallard: I would like to read Mr. Bowles' statement where he says, "I am only asking whether or not this witness has any familiarity with them as head of this department in the light of the investigation into regional
[fol. 77] counsel and the past history of the department." I want the record to further show that President Kennedy was examined on page 30 of his deposition:

"You know of course then of a case in 1933, in 15 Ohio Law Abstract, 160, the title of In Re: *Petition on the Committee of the Rule 28 of the Cleveland Bar Association*

against *Newcomb, Newcomb & Nord*, that laid down the same principle, did it not, as the Supreme Court of Illinois?"

The answer was, "I am not so familiar with what they did, I wouldn't say that it came in the same classification with the Supreme Court of Illinois."

Mr. Bowles, Jr.: I don't know whether you want to hear it, sir, but on page 117, he discloses complete familiarity with that particular record so identified.

The Court: This is exhibit, Plaintiff's Exhibit No. 17 is identified and now filed; exception to the admission of it, and the filing of it, by counsel for the defendant is noted on the record.

(Plaintiff's Exhibit No. 17, case of In Re: Petition, was marked and received in evidence.)

Mr. Bowles, III: Your Honor, I fully realize that it is a very lengthy and bulky document.

The Court: Well, you didn't make it up. I don't see [fol. 78] any occasion for you to apologize.

Mr. Bowles, III: All of it, I submit, is very pertinent to this, and I would like, for the benefit of the Court, to just briefly summarize certain parts of it.

The Court: Would it be better, perhaps, to save this for argument?

Mr. Bowles, Jr.: I think so. There are certain places there that can be, between now and adjournment, pointed out to you, that show you just why you need not read it all. It is nearly 2,000 pages, I think.

Mr. Bowles, III: Including all of the exhibits.

The Court: If you are going to accomplish that result, don't try to finish by one o'clock, just take your time.

Mr. Bowles, III: I can get started, though.

The Court: Yes, you go right ahead.

Mr. Bowles, III: This record shows that the idea of this Legal Aid Department had its inception, primarily in the mind of a man named H. R. Fuller, whose testimony appears in there at Volume 1, page 359 through 376. This man, Fuller, was the legislative representative of the four big Brotherhoods in Washington. He is the man who was

responsible for lobbying railroad bills in Washington, and he was instrumental in the early 1900's in securing the pas-[fol. 79] sage of FELA, the amendments to the Safety Appliance Act, and the various other acts having to do with the railroad personnel. In 1906, as this record shows, he presented a plan, almost identical to the one later adopted by the Brotherhood, to this group of the four Railroad Brotherhoods, and it was objected to right off, and killed on his presentment by the president of the Automotive Railroad Conductors, who said, and as Mr. Fuller quotes him, "We want no part of that."

The Court: These four were all four railroad Brotherhoods?

Mr. Bowles, III: That is the Brotherhood of Locomotive Trainmen, the Brotherhood of Railroad Trainmen, the Brotherhood of Signalmen, and the Brotherhood of Automotive Conductors.

The Court: There are four Brotherhoods?

Mr. Bowles, III: After that, he teamed up, this Mr. Fuller did, with a man named W. A. Percy, who was the attorney for the Brotherhood of Locomotive Trainmen, and the Automotive Conductors, and this same plan was presented to the Brotherhood of Railroad Trainmen in 1916, 1919, and 1922, and each time it was rejected; and in that record, you will find much of the correspondence between Percy and Fuller as well as several speeches made by each of them in the early 1900's, as to why you should have such [fol. 80] an organization as the Legal Aid Department.

In 1928, Alexander F. Whitney became president of the Brotherhood of Railroad Trainmen, and Mr. T. J. McGrath became its legal counsel. Now, these two were apparently latched onto the idea, notwithstanding that the Brotherhood had rejected it on three or four separate occasions before, and presented it to the various governing bodies of the Brotherhood, and generally to the membership at large, by the referendum which we previously introduced, and on May 1, 1930, the Legal Aid Department of the Brotherhood was set up with T. J. McGrath running it.

Some fifteen or sixteen regional counsels, this record will show, through McGrath's testimony which is quite lengthy, were selected in various strategic rail centers throughout the country, and contracts were signed with these regional counsels, whereby they agreed to take all of the Brotherhood of Railroad Trainmen cases on a 20-percent-fee basis with a 5-percent, sometimes 6-percent kickback to the Legal Aid Department, and the plan was put into effect as of May 1, 1930.

The plan, as Mr. McGrath and Mr. Whitney both described in there, worked more or less like this: When a member of the union or the Brotherhood was injured, someone in his lodge would immediately report the accident to [fol. 81] the Legal Aid Department; the Legal Aid Department would, in turn, send a regional investigator to see the man, and as this record shows, in Ohio, alone—the small state of Ohio—there were two full-time regional investigators. The regional investigator would interview the man, obtain the facts of the occurrence, and advise him as to his rights, including legal rights, and warn the man against the sharp practices of the railroad claims men and tell him that there was a Legal Aid Department at his disposal, which would advise him as to his rights in detail, and that if he couldn't get the railroad to make him a proper, voluntary settlement, based on advice from the Legal Aid Department, then his union, the Brotherhood of Railroad Trainmen, would supply him with a lawyer and the regional counsel who would only charge 20 percent, much less than everybody else in the personal injury business was charging.

Now, Mr. McGrath, in Volume 2, page 115, being asked by Mr. Morris, who was the lawyer representing the Cleveland Bar Association, Mr. Morris asked this question:

> "But if the men finally get to the point of adopting your plan in your union, it will mean that in this region, Newcomb, Newcomb & Nord will have a monopoly of those cases?
>
> "A. Yes, sir."

[fol. 82] And Mr. Morris says, "That's right, isn't it?"

And the witness, who is Mr. McGrath, says,

"If they cooperate with us in our plan to carry out our suggestion, cases will not go to any other lawyers or member of our Brotherhood unless we should broaden our list," or increase the number of regional counsel.

The Court: Finish here on that point.

Mr. Bowles, III: Well, it is convenient for me to stop at any time.

The Court: I think we had better recess at this time until 2:15.

(Whereupon, a recess was taken for lunch until 2:15 p.m.)

[fol. 83] AFTERNOON SESSION

(Met pursuant to adjournment at 2:15 p.m.)

Mr. Bowles, III: I believe I left off, Your Honor, where I quote to you the statement by Mr. McGrath, "And if this plan worked as he hoped it would work, that it would be a virtual monopoly for these regional counsel for all the business that the Brotherhood of Railroad Trainmen might have in the way of personal injury."

Now, this particular case, as Mr. Stallard stated, was brought against Newcomb, Newcomb & Nord, the law firm, which was the second regional counsel ever appointed in this setup. It was for violation of Rule 28, which, in Ohio, is an all-inclusive section of their ethics. Even though the Brotherhood wasn't a party, nevertheless, the lower court —and it was affirmed on appeal—openly condemned the plan of the Legal Aid Department as involved in the practice of law by a corporation, the act of solicitation by a corporation for a specific lawyer, and, of course, in the decree handed down, Newcomb, Newcomb & Nord were enjoined from acting as regional counsel in Ohio, on the basis that doing so amounted to unethical conduct, and with special emphasis on the fee-splitting aspect of this arrangement.

Now, going on to this, in just a little bit more detail, [fol. 84] the people that testified in this Exhibit 17 were primarily Mr. Alexander F. Whitney, the then president; Mr. McGrath, the man who was general counsel and organ-

ized and set this up; Mr. Harrigan, the man who took over from him, and innumerable other people that were involved in the various different cases of the individual member.

Now, Mr. McGrath, in his testimony, or Mr. Whitney, in his testimony—excuse me—at page 43 and 46, Volume 1, stated that these regional counsel were picked out by Mr. McGrath, but that Whitney approved them, and the first one that he ever appointed was a firm of Davis, Michel, Yaeger & McGinley in Minneapolis, and this is the same firm in different form that was involved in a proceeding in Nebraska similar to this in 1958; just the personnel had changed around a little bit.

The second firm that was appointed was Newcomb, Newcomb & Nord, which was the firm involved in this proceeding in Exhibit 17, and Mr. Whitney also testified at page 48 that the members were told about the Legal Aid Department and the setup was explained to them through the journal and that each officer of the local lodge had been instructed to explain this setup to the members so that they would know exactly what they could look to expect from the Brotherhood. He testified, at page 59, this is still in Volume I, that the Newcomb firm carried out all of the [fol. 85] instructions that were contained in these Rules and Regulations which we have previously introduced, I believe, as Exhibit 5.

At page 68 he testified that the viewpoint of lawyers was never asked about this plan in setting it up, that the only lawyer involved was Mr. McGrath. He also testified that all of the lawyers that he had hired as regional counsel had been engaged in what he termed as the personal injury business, and that he had heard, on page 73, that in a good number of cases the appointed regional counsel had been engaged in active solicitation. He also testified that he approved of the individual appointment of each of the regional investigators.

The Court: This is Mr. Whitney still?

Mr. Bowles, III: This is Mr. Whitney still.

And that at page 80, he kept in touch with this operation as it went along, and then, strangely enough, at page 81, he makes this statement: "We don't make any claim that there have not been indiscreet things done."

He admits that a few things, perhaps, have gone awry from the original plan; and then at page 83, he expresses his opinion that it was perfectly proper for his regional investigators appointed by him to comment on the ability of other lawyers, provided, he said, "that they have said something unpleasant about our Legal Aid Department." [fol. 86] At page 85, he makes this rather strange statement, "—that it was hoped that the Brotherhood Legal Aid Department would investigate the cases and bring about a settlement, without the necessity of the injured man coming in contact with regional counsel." He was primarily interested in this Legal Aid Department attempting to work out the settlement for the man, and if that could not be done, and if suit was necessary to be instituted, that is when the regional counsel came in, and he said, "Yes, we do that in many instances."

He also stated at page 86,—this is still President Whitney—"Before the Legal Aid Department would render an opinion as to whether the man's case involved liability on the railroad or not, that in many cases they had him in and examined by a doctor so they could advise him as to what settlement he should make."

Now, turning to Mr. McGrath's testimony, which is scattered through this record in five places, he states that at page 10 in Volume 2, that this Legal Aid Department was organized by him with the assistance of R. B. Newcomb. Now, R. B. Newcomb is one of the members of the firm that is being attacked in this Exhibit 17, and at page 11 he states that the membership dues paid by every member of the Brotherhood of Railroad Trainmen entitled him auto- [fol. 87] matically to the services of the Legal Aid Department.

Now, page 18, 19, and 20, McGrath stated that the Statistical Department, and this is the department that prepares the forms and compiles the information for making reports to the ICC, as to the number of men injured in railroad service, was not established until about a year ago, or 1931, whereas, if you will recall, the Legal Aid Department was established on May 10 of 1930—May 1, 1930.

Now, that is particularly important, Your Honor, in view of the statement of Mr. Stallard, which he previously made, that the purpose of these forms, that is, the LA-2 form, the FLA-2, FLA-2-D, were for statistical purposes; and when these forms were initially first used, there was no such thing as this Statistical Department.

Now, further, at page 23, Mr. McGrath says that Legal Aid only communicates with the man if the injury is major or serious. They are not worried about these trivial or inconsequential accidents, and at page 28 through 29, he reviews how a typical case would occur. He admits at page 31 and 32 that the investigators were sometimes sent when there has not been any request on the part of the injured man. Now we will introduce a little later on, Your Honor, as Exhibit 18, a case of Dworken against the Brotherhood of Railroad Trainmen, and I would just like to mention [fol. 88] briefly, right here, because at the same time that this Exhibit 17 case, the Petition on Rule 28, was pending in the same court, there was pending the Dworken case against the Brotherhood of Railroad Trainmen, and Mr. McGrath stated that during the pendency of the Dworken suit, that they no longer gave out legal advice in Ohio, but they were doing it in all forty-seven remaining states at that time. He testified at page 37 that the Legal Aid Department on occasions had taken down to the regional counsel; he stated that it was the option, on page 38, of the member to choose any regional counsel, not including in that statement, any lawyer, but any of the regional counsel. He didn't have to confine himself to the regional counsel in his particular neighborhood. Now, on page 40, he states that because of the pendency of this Dworken case in the same court that all questions of liability had been referred to the firm of Newcomb, Newcomb & Nord, and they write to the injured man and advise him notwithstanding the fact that that firm at that time is not the man's counsel, but, strangely enough, he says even in Ohio, if a case comes in, "and I look at it, and there is obviously no liability, I will go ahead and tell the man that he hasn't got a case."

So he only in Ohio, during the pendency of this suit, refrains from advising people that they have a case. He still

tells them that they don't have a case. Now, in regard to [fol. 89] this difference that has been mentioned, between 5 and 6 percent of the kickback to the Brotherhood, I think the statement by Mr. McGrath at page 42 of Volume 2 in Exhibit 17 is very important. The question was asked him:

"And then what does the regional counsel do with the 20 percent?

"A. The regional counsel sends us 5 percent, that is, 5 percent of the net amount recovered, except, I think, in one or two cases, when they sent us 6 percent.

"Q. In other words, there are certain classes of cases you get 6 percent and not 5?

"A. No, there are certain sections of the country where our contract is just a little more advantageous from our standpoint."

Now, later on at page 48, still in Volume 2 of Exhibit 17, he states that if Rule 28 forbids the fee-splitting, that they will find another way to get that money out. On page 49 at the top, he says, as one of the alternative plans to get this money in, that "If we can't get it by the method we have been previously using, we might think of using an assessment on the members."

At page 54, he admits that the first two full-time regional investigators that were put on the Brotherhood payroll had [fol. 90] been ambulance chasers for the present regional counsel.

The Court: You said "investigators." Was that a slip of the tongue?

Mr. Bowles, III: No, regional investigators.

The Court: Regional investigator is not a lawyer, as a rule, is he?

Mr. Bowles, III: No, sir, regional investigator is the man appointed by the Brotherhood and assigned to a separate legal counsel. He admitted that the first two full-time regional investigators were paid by the Brotherhood and had been ambulance chasers for the present regional counsel, Newcomb, Newcomb & Nord; and, needless to say, they still continued to work under that firm. He also stated at page 57, that the bookkeeping of the Brotherhood and the

Legal Aid Department had always been kept strictly separate, that is something I think you will find continued right up today, at least as far as 1959, and as far as we have been able to obtain any of it. It was then put into evidence in our Exhibit 17 as Exhibit 4, a long list of the cases handled by Newcomb, Newcomb & Nord in this period, from the first of May, 1930 up until the middle of 1931.

There are quite a lengthy number of cases handled, and it was also put in at a later date, another list of cases where [fol. 91] Newcomb, Newcomb & Nord advised members, but were not actively employed as counsel. He again takes up a discussion of how this department works, and what the regional investigator does. He goes to see the claimant; that he takes a statement. He explains how the Legal Aid Department works, and attempts to enter into contract negotiations for regional counsel.

At page 86, he states that they have refused right straight along, to turn any of the statements obtained by the regional investigators or any of these forms that we have heretofore introduced over to any lawyer other than the regional counsel.

It is interesting to note in the deposition that we took of the now president, Mr. Kennedy, that he makes the statement that it would be rather difficult for a man, meaning an attorney, whose background is antagonistic to labor, to obtain these reports, and he admits that today even if he was representing a member of his Brotherhood.

Now pages 333 through 405 and 486, 513, involve the discussion of the various cases handled by the Legal Aid Department with Newcomb, Newcomb & Nord acting as counsel, and, strangely enough, this does not confine itself to Ohio, but there are cases involving North Carolina claimants, South Carolina claimants, West Virginia claimants, [fol. 92] and even several New York claimants, and there is one case in particular that is discussed between pages 215 and 230 of Volume 1 which might be referred to as the Rattigan case where Mr. McGrath admitted that this member, Rattigan, who had already employed and had a contract with another lawyer named Oldmixon from New York, but he admitted that he wrote Rattigan and the letter is in

evidence here, trying to get him to get rid of Oldmixon, and hire Newcomb, Newcomb & Nord; that he send him slanderous material about this fellow, Oldmixon; that he sent him untrue material about this fellow, Oldmixon, and, of course, the final result was that Rattigan broke his contract with Oldmixon, and Newcomb, Newcomb & Nord became his counsel, and he made this strange statement, "If I had it to go over with again, I would do it now, right now, today." He admits that they don't hesitate to boost Newcomb, Newcomb & Nord, and the other regional counsel; that his instructions to his men are to push these fellows and advertise them.

Now, strangely enough, he had previously testified, because of the pendency of the Dworken case, that as of April 1, 1930, '31, excuse me, they had stopped receiving any fee-splitting in Ohio; yet the journal entries of the books of the Legal Aid Department show that they were receiving them up until June 23 of that year. He admits that this Dworken case, which I will introduce in a moment, [fol. 93] the purpose of it was to determine whether the Legal Aid Department was practicing law or not, and admits that whatever the determination made there, that they will abide by; but that in his own personal opinion, he doesn't believe that this scheme amounts to practicing law, and although Mr. McGrath is a lawyer, who is a member of the Bar of Ohio and of the Bar of Nebraska, I believe.

Now, he, in Volume 1 at page 24, at page 124, McGrath says that in the selection of these regional counsel to represent the members throughout the country, it didn't make any difference to him whether they had been ambulance chasers or not; that he was just after a man who was a good personal injury lawyer.

At page 166—now this is in Volume 1 of Exhibit 17—he stated that as of December 1, 1931, a Mr. Harry Harrigan, who was working under him, who is a non-lawyer, whom I will take up in a minute, took over. McGrath, later on, admits that he never made any study of the ethics of the State of Ohio, of the American Bar Association, the canons of it, in attempting to set up his idea of how this bureau should operate. He admitted at page 182 that he

was more interested in the welfare of the members of the Brotherhood than he was in any rules set up for relations of lawyers and lawyers. He admits that the Brotherhood [fol. 94] took part in this successful defeating of all of the anti-solicitation statutes in Ohio up to that date. And then, at page 209, he states that the regional counsel works not only for the member it is representing as a personal injury lawyer, but are also representing the Brotherhood of Railroad Trainmen in any litigation that they might have involving labor problems, exactly the same thing that Mr. Stallard has told you that supposedly now the Legal Department does.

There is one thing I would like to read you out of this, Your Honor, which appears in Volume 1 of Exhibit 17, and McGrath here is talking about how he selects his regional counsel, on what basis. It is on page 124. He says, "We have men wherever we have been able to secure them who are experienced in the trial of damage suit cases. Now you can differentiate between ambulance chasers. I don't think a great deal of odium attaches to ambulance chasing where the fellow handles his client with decency, and treats other lawyers on a fair plane when he solicits business. I consider it is unethical, but I mean from a purely moral standpoint. We sought to select men who may have used certain means to induce clients to come in there, but who would stand the scrutiny of any fair-minded man as to whether their practices were reasonably decent."

Now, one other thing on this exhibit, Your Honor, which [fol. 95] is pointed out at page 100 through 102 of Volume 1, in the testimony of Mr. Harrigan, and I will remind you, Mr. Harrigan is the man who took over running this department after McGrath ceased to run it in 1931, and ran it up until 1947, when a Mr. Maher took over, and there were several other people, and then Mr. Maher is the one again today.

At those pages, Mr. Harrigan admitted that he had been employed by Wisconsin law firm, and that he had been criticized in an opinion rendered in Wisconsin in which he was identified as the superintendent of the solicitation department of that firm, at $10,000 per year. Of course, that is in 1929.

Now, the next case that I would like to discuss is that of Dworken against the Brotherhood of Railroad Trainmen.

Mr. Stallard: Well, Your Honor, I would like to comment on this exhibit.

Mr. Bowles, III: Oh, excuse me. Excuse me, I am sorry.

Mr. Stallard: Your Honor, this exhibit No. 17, I believe counsel makes reference that this information is gotten for statistical purposes. That is true. He said the Statistical Department wasn't in existence. I don't know what he means by the Statistical Department. Certainly, my client [fol. 96] testified on page 50, 51, 52, and 141 that they used this in their own Statistical Department. They also used it before the Interstate Commerce Commission, which certainly was in existence in 1931. They used it before Congress in getting laws, the Federal Employees Liability Act.

I can see, Your Honor, if you have a wreck on the Atlantic Coast Line, that it might affect a whole lot of citizens going to Florida from Richmond, and if nobody made an investigation, nobody presented anything to the Interstate Commerce Commission, because they didn't have a Statistical Department, then we might not have any new Safety Appliance Act, and we wouldn't go forward, and I respectfully submit, and I would like to read the testimony of President Kennedy on that very point, on page 50:

"A. The purpose of the investigation, of course, is to protect his rights."

And of course, they protect the rights of those men and they would be the rights of yourself and my rights to be protected in safety appliances.

"A. Many of these investigations of which we have an investigator are held by the Bureau of Safety. We get the facts, the same as they do.

Q. I am not talking about that. The purpose of this whole department of Legal Counsel is to protect the rights of the individual member that gets injured?

[fol. 97] A. We find under our laws, our present safety laws, that the Interstate Commerce Commission employs an individual in different sections of the United States to investigate all serious railroad accidents. We attend those same hearings for the purpose of getting statistical evi-

dence to the same extent that the Interstate Commerce Commission does, and so it is important that we get the same advice from our local lodge officers as to a serious accident, a collision or otherwise, as the government does in Washington, so that when the hearing is held, generally within a few days, we can have our representative there."

Also, now if it is counsel's purpose to prohibit the Brotherhood from getting this information to use in strengthening the Safety Appliance Act or the Federal Employees Liability Act, I can't see that, because that is a constitutional right, and it is to protect the citizens of Virginia, whether it be railroad employees or not.

I don't know what department he had reference to. He said there is no Statistical Department. The Brotherhood has a Statistical Department for insurance purposes. They have an insurance company, and they want to keep up with that, because they have those policies on these men. So [fol. 98] I respectfully submit that that really does not have anything to do with the present case.

Mr. Bowles, Jr.: If Your Honor please, I just briefly want to state to the Court that the impression that apparently is created by Mr. Stallard is taken completely out of context, because President Kennedy is being examined at that time, and at the end of several pages and which has been discussed with him, the primary and the secondary purpose of getting these reports from the secretaries of the local lodges which are required under the constitution and the orders of this president to make those reports to the Legal Aid Department.

Now, for some five or six pages, it has been very difficult to drive the president into a consideration of the difference between the primary and secondary purposes of these reports, and Mr. Stallard picked up at the point where he began talking about the secondary purpose of the report, and may I read you this:

Answer: "I would say that we would have to make the investigation as promptly as possible.

Question: Well, now, the purpose of that, as we have said, would be to find out the facts so that the man's rights could be protected?

Answer: The purpose of the investigation, of course, is to protect his rights."

That is, the individual members who had been injured, [fol. 99] the widow of the one that had been killed, or his family, and that is the main and primary purpose of what has been read to you about what Mr. McGrath said—that this statistical business was a later thing which came in as a secondary purpose of this investigation originally started which had for its primary purpose the protection of the man's rights if it was an important and a big money case to get him into the hands of regional counsel to get a big verdict, and what they did, always, as we shall later show you, is that they went in and one deposition I have in mind, particularly, which will be read to you later, Mr. Lohman, I believe, in San Francisco, where they undertook to say that here is a man with a sprained back, if you stay on with the railroad, you may get $1,000 or $1,500, or if you get just an ordinary lawyer that is about all he can get you, but our way of getting money about these things is $45,000 for a sprained back, if you will come on with us. We will get you $45,000 and then proceeded to show him how many big verdicts he had gotten, and all of this and the other, and the man did not sign up with him, and settled his case with the railroad.

Incidentally, Your Honor, that happened almost a year following this magic date.

Mr. Stallard: Now, Your Honor, he is opposed to a motion—he has jumped up from what we have here, [fol. 100] Exhibit 17, going to depositions in call. If I may, I will reply to that right now.

The Court: Very well.

Mr. Stallard: Mr. Loman, who was injured on one of the railroads out here, and I have made a motion to exclude that evidence on the ground that the man with whom he talked was not an investigator of the Brotherhood, he had been fired and President Kennedy testified on June 1

that he had fired him a long time before, and when they took the evidence in July and August, he was not at all an investigator. The conclusion drawn by counsel would not be substantiated by the evidence, because he said the man said "He could get him $45,000." The evidence shows that they did run him around; the man said, supposedly, or the investigator said, "He had a bad back, and I got $45,000 in mind." But he didn't say he could get $45,000 for this man. That is drawing upon the imagination of counsel, but that evidence is certainly not admissible in this case on the Rules of Evidence.

Mr. Bowles, III: The next exhibit I would like to introduce, Your Honor, is the case of *Jack B. Dworken against the Brotherhood of Railroad Trainmen, Grand Lodge.* This case is a case that was brought to final conclusion on May [fol. 191] 4, 1932. It was also handled in the State of Ohio, in Cuyahoga County Court, and this is the case that I have been previously referring to that was pending at the same time as the case that Exhibit 17 was pending, and it is very interesting how this case was resolved, Your Honor. The plaintiff agreed to a dismissal on the representation by counsel of the Brotherhood of Railroad Trainmen, that they had been doing these things, splitting fees, running cases, solicitation; and that now, in good faith, they had stopped, and that they were going to stay stopped. Of course, I would submit, Your Honor, that is exactly the same situation we have here in this case as raised by the Answer, and I would like to introduce this as Exhibit 18, if I may.

Mr. Stallard: Your Honor, I would like to examine it before he introduces it, to see if I have any objection. Now, Your Honor, my objection to this instrument is that this decree enjoins the Legal Aid Department from giving opinion with respect to their legal rights, individual members, the Legal Aid Department was practicing law, giving opinions. They came in court and said they were no longer giving opinions, but they were referred to counsel, either of the man's choice, or if a dependent or minor child in the railroad service requests a legal opinion, respecting the

rights of such persons or person, arising out of such injury or death, such request will be referred to counsel of the [fol. 102] choice of such member or dependent with no responsibility on the part of the defendant for the character of the service rendered by the attorney. In other words, they would refer it.

Mr. Bowles, III: And in the division of the fees?

Mr. Stallard: They went on to say there would be no division of the fees, if somebody wanted to, there would be no division of the fees, if they referred it to some lawyer, but the real point is they enjoined from giving legal opinions. Well, so far in this case, as I understand it, they don't say the Legal Aid Department is giving legal opinions; they are really soliciting business for lawyers who gave legal opinions; and therefore, I object to this.

To start with, this happened twenty-nine years ago, and the officers of the Brotherhood are no longer living, nor any of the parties participating in the case, and I don't know what representations they have made, and I do not feel I would be bound by something thirty years ago.

Mr. Bowles, III: I think the record speaks for itself, Your Honor, and it goes to the question of exactly what we have here in this case, of good faith.

Mr. Stallard: I would like to ask, does counsel take the position that they are now giving legal opinions, the depart- [fol. 103] ment giving legal opinions?

Mr. Bowles, Jr.: Your Honor, Mr. Kennedy, the president, in his deposition of June 1, I believe took the position that they had that right under the Illinois case.

Mr. Stallard: Your Honor, I don't believe they have that right, and I don't believe the Illinois case said they had that right.

Mr. Bowles, Jr.: That isn't the point, sir, Mr. Kennedy contended it was their position that they did have that right.

Mr. Stallard: I don't contend that. I don't believe they could, because that is practicing law.

Mr. Bowles, Jr.: That is the thought that ran through my mind at the time Mr. Kennedy made that statement.

Mr. Stallard: I read his deposition three times. I don't remember that phase of it. I could be mistaken, but I don't

remember he said that they had a right to give a legal opinion. If he did, he is absolutely wrong. I don't remember him saying that.

(Discussion off the record.)

The Court: Plaintiff's Exhibit 18 so identified is now filed.

[fol. 104] (Plaintiff's Exhibit No. 18 regarding the Dworken case, was marked and received in evidence.)

Mr. Bowles, Jr.: On that point, Your Honor, we are expecting to show and to tie up this thing later on, as part of this plan, that one of the inducements to push the people into the regional counsel is that we will make this investigation and make available to regional counsel the statements of witnesses that we get, but if you don't hire regional counsel, maybe you won't get it; that is what has happened in several cases, as we shall show you later.

Mr. Bowles, III: As well as Your Honor, the fact that at this time the railroads, I gather, and I understand they still do have a rule, that when an accident happens involving any of their men, their members, that is, the employees of the railroad are not to give statements to anybody other than their own Claims Department, and are subject to dismissal for doing so, and it is quite obvious that the only person who can get the statements from these people are the regional investigators of the Brotherhood, because they work right with these people; they know them all; they are able to supply something which the average personal injury lawyer, because of not having that "in," can't supply, and that is another inducement.

[fol. 105] The Court: I understand you to say that the railroads have a disclosure rule.

Mr. Bowles, III: That is what they claim; that is what Mr. McGrath claims in his testimony.

The Court: You mean the Brotherhood claims?

Mr. Bowles, III: That's right.

The Court: I understood you to say the fact that they did have.

Mr. Bowles, III: No. I meant it has been brought out in Mr. McGrath's testimony. It would take me a while,

but I could find the exact place where he stated that that is the reason for not wanting to give these statements out, because the member would be subject to dismissal.

(Discussion off the record.)

(Recess.)

Mr. Bowles, III: For the sake of the record, Your Honor, I would just like to state that the Dworken case, Exhibit 18, was not an injunction. The suit was dismissed on a showing supposedly in good faith that a new plan had been adopted.

The Court: That is apparent from the exhibit.

Mr. Bowles, III: Yes, sir, and for the sake of the record, [fol. 106] the purpose of Exhibits 17 and 18 is to show that as of 1933, the two Courts had already pointed out to them what was wrong with their plan, but nevertheless, they have continued to the magic date.

I would like to introduce in evidence next the case of *Joseph Ryan against Pennsylvania Railway Company*, and I have here a photostat of the reported opinion which appears in 268 Illinois Appeals 364. I would like to offer that as Exhibit 19.

The Court: We now understand this is not evidence in this case; it is a reported authority, which we could look up as a precedent; isn't that right?

Mr. Bowles, Jr.: Quite right, sir.

The Court: For convenience, you are putting it in for convenience?

Mr. Bowles, III: Yes, sir.

Mr. Bowles, Jr.: Convenience, and also—

The Court: It is really not evidence.

Mr. Bowles, Jr.: —there are some factual things that are determined in them, and related to the Brotherhood, and by which we feel they are bound.

The Court: In other words, without this exhibit, you could cite the case, and I could get the book here and read it?

[fol. 107] Mr. Bowles, III: That is correct, sir, but you would find that you would have to go across the street to do it, I am afraid.

The Court: I can get books out and have them brought over here. This is just put in as a convenience?

Mr. Bowles, III: Yes, sir, I would like to briefly state that that was a case in which regional counsel, Mr. Ryan, was suing the railroad for his fee. The railroad had gone in and settled the case directly with his client, and he was suing for his fee, as well as the Brotherhood's 5 percent, and the Illinois Court decided that in spite of the fact that this involved solicitation, in spite of the fact that it involved fee-splitting, and so on, that the purpose of the Brotherhood in doing this was so wonderful that they would say this was perfectly all right, and "You are entitled to get your fee." It is a very strange opinion, and the main reason for putting it in, is the same Court now that rendered the Illinois opinion in 1958, that the defendant now so heavily relies upon—

The Court: Well, will you take this up more fully later on, in argument, or read certain pages into the record?

Mr. Bowles, III: I don't think it is necessary to read certain pages, Your Honor, I just wanted to briefly ac- [fol. 108] quaint you.

The Court: I didn't catch the point from that statement, and I do want to catch the point.

Mr. Bowles, III: The point is that the same Court that rendered the opinion in '58 is this same Court in the Ryan case, and that for some odd reason in 1932, or whatever the date that case is, they felt that what the regional counsel was doing was perfectly all right. In '58, they have completely changed, and reversed themselves. This was the case that was heavily relied upon by the Brotherhood to state all throughout the country that what they were doing was perfectly all right. It is in direct opposition to Exhibits 17 and 18.

The Court: You speak of it now, as an overruled case?

Mr. Bowles, III: Yes, sir. Well, it is a case that proved quite embarrassing to the Illinois Supreme Court in 1958.

Mr. Bowles, Jr.: When we get to it, the Illinois case, we want to show you also at that time the background surrounding it, how the Illinois case arose, because Mr. Kennedy, in his deposition, has undertaken to say that he was the one that started the Illinois case, in order to find

out exactly what the Brotherhood could do. We submit that [fol. 109] the situation in the background is not that at all, but that Mr. Kennedy's organization was about to be gotten into real trouble, and he rushed in to stymie that trouble, and brought out the declaratory judgment suit, instead, and that is the same jurisdiction.

The Court: This Exhibit 19 is identified and filed.

(Plaintiff's Exhibit No. 19, Ryan v. Pennsylvania Railway, was marked and received in evidence.)

Mr. Bowles, III: I would like to introduce next, Your Honor,—that is the decision, Your Honor, of the intermediate appellate court in Illinois that you are now looking at, Exhibit 19.

The Court: But it was not reversed; it didn't go further?

Mr. Bowles, Jr.: No, sir.

Mr. Bowles, III: No, it did not go further.

The Court: Now, then, you have another one?

Mr. Bowles, III: The next exhibit I would like to introduce is the case of *In re: O'Neill* in 5 Fed. Supp., 465. This is a New York case, a case from the Eastern District of New York, in the District Court, and I would like to introduce this as Exhibit No. 20, Your Honor. It is also a [fol. 110] photostat of the opinion, of course.

The Court: Exhibit No. 20 is identified and filed.

(Plaintiff's Exhibit No. 20, In re: O'Neill case, was marked and received in evidence.)

Mr. Bowles, III: The purpose of introducing this exhibit is a similar situation as in the Ryan case.

I would like next to introduce the record in the case of *Young against GM & O.*, the testimony in that case, a certified copy of that record, as Exhibit 21. The certificate appears on the last page, Your Honor.

The Court: This case from the District Court of the United States of the Eastern District?

Mr. Bowles, III: Of Missouri.

The Court: Of the Eastern Division of the Eastern Judicial Division of Missouri, is identified and filed as Plaintiff's Exhibit 21.

Mr. Bowles, III: Yes, sir.

(Plaintiff's Exhibit No. 21, Young v. GM & O case, was marked and received in evidence.)

Mr. Bowles, III: Now, that case, Your Honor, contains the next two exhibits, but I have photographed those and [fol. 111] will introduce those separately. Briefly, that case was an attempt on the part of the railroad company to prevent regional counsel, DeParcq, from representing the plaintiff, Young, on the basis that the case had been solicited as a part of this, the plan of the Legal Aid Department, and in that case, DeParcq testified that up until June 15, 1946, the plan was in operation exactly the same way as it was described to you in Exhibit 17, but that on the date of June 15, 1946, a letter, which I will introduce in a moment, was sent out by President Whitney ending the fee-splitting, and a letter similar to the magic date letter that we have here.

Mr. Stallard: I would like to make a reply to that.

The Court: Yes, I have got a question about that, myself. You want to introduce that now, as Plaintiff's Exhibit No. 21-A, or as No. 22?

Mr. Bowles, Jr.: 21.

Mr. Bowles, III: The exhibit of the letter of June 15, 1946, to regional counsel, DeParcq, from the president of the Brotherhood, Whitney, I would like to introduce that as Exhibit 22. Now, it was introduced as DeParcq's Exhibit No. 2, in our Exhibit No. 21. That also was a photostat.

The Court: This is 22, the letter dated July 22, 1946, is identified and filed as Plaintiff's Exhibit 22.

[fol. 112] (Plaintiff's Exhibit No. 22, a letter, was marked and received in evidence.)

Mr. Bowles, III: I think the date of the letter is June 15, Your Honor, 1946.

The Court: I read the wrong date, the date of this letter.

Mr. Stallard: May I see the letter?

The Court: It is June 15, correct the record, please. Letter dated June 15, 1946, it is filed as an exhibit. It was filed as an exhibit in the case covered by Exhibit No. 22 on July 22, 1946.

Mr. Bowles, Jr.: That is Exhibit No. 21.

Mr. Bowles, III: In the case covered by Exhibit No. 21, Your Honor.

The Court: That is right, 21. Now, Mr. Stallard, you have something to say about that?

Mr. Bowles, III: Well, may I introduce the other letter first, and I think we can cover it all at one time.

The Court: Yes, sir.

Mr. Bowles, III: I would like to introduce here the letter of June 15, 1946, from President Whitney, directed to all regional counsel, as Plaintiff's Exhibit No. 23, and this previously DeParcq's Exhibit No. 3 in our Exhibit No. 21.

[fol. 113] The Court: The letter from Whitney, president, to all regional counsel dated June 15, 1946 is identified and filed as Plaintiff's Exhibit No. 23.

(Plaintiff's Exhibit No. 23, a letter, was marked and received in evidence.)

Mr. Bowles, III: I just want to point out to the Court at this time that in 1946 the regional counsel who was thought to be a party in this suit had been appointed; Mr. Savage having been appointed in 1937.

Mr. Stallard: Your Honor, I would object to the introduction of both exhibits, especially Exhibit 22 and 21, on the ground that photostatic copies of letters which are not signed purportedly from Mr. A. F. Whitney and for the reason that there is no explanation behind it, other than on the record, 27, Mr. Kennedy was asked about the letter which I hold, which I believe is Exhibit No. 21 that you have to DeParcq, letter to DeParcq.

The Court: Wait one minute; that is 22.

Mr. Stallard: Is that 22?

The Court: I reckon it is the same one dated June 15, '46.

Mr. Stallard: Yes, sir.

The Court: All right.

[fol. 114] Mr. Stallard: Mr. Kennedy was asked by counsel for the plaintiff here:

"Question: If Mr. Kennedy, these are correct letters, it would appear that Mr. Whitney did in 1946 exactly what you did in 1959, wouldn't it?"

He said: "No sir, I wouldn't understand it that way."

Question: "Wouldn't you understand that 'Please be advised that neither the Brotherhood of Railroad Trainmen nor any department or bureau thereof is financially interested in any case or cases now pending or to be filed by you in any court, in any state, against common carriers or others, and that no part of any fee received by you as anticipated will be accepted by the Bureau of Railroad Trainmen.'"

Mr. Kennedy: "I would take it that Mr. Whitney dismissed DeParcq as a legal representative of the Brotherhood.

Question: Well, this was addressed to all regional counsel of the Brotherhood of Railroad Trainmen."

Certainly, this letter that he just read was not addressed to all counsel of the Brotherhood. There is a shorter letter which was not presented to Mr. Kennedy, so Mr. Kennedy had no way of explaining the letter which is being introduced here, the short letter, not this long one, to DeParcq. This letter was read to him. It is in the record, page 27. [fol. 115] Mr. Kennedy said, in reply to this, "All I understand is that he is being fired as lawyer."

The Court: Well, there is a question about construction of a written instrument. I reckon the Court can construe it without any testimony.

Mr. Stallard: Well, sir, he was questioned of this letter.

The Court: You may bring Mr. Kennedy in to explain it, if you want to.

Mr. Stallard: He did explain it.

The Court: But you didn't ask him about the little letter?

Mr. Stallard: No, they didn't ask him.

The Court: And you didn't, either?

Mr. Stallard: I didn't know of its existence until this minute; how could I? I was present, Your Honor, and he

makes no—I didn't introduce it, and he makes no reference other than he read this letter.

Mr. Bowles, Jr.: I hand you a copy of the two letters; these letters are filed as DeParcq's Exhibit No. 2 and 3 in the proceeding against Young in the Ohio Railroad, in the United States District Court, No. 3957, in 1956, both letters —that means two.

Mr. Stallard: I didn't understand that the letter—

[fol. 116] Mr. Bowles, Jr.: Well, you just didn't listen at that particular time.

Mr. Stallard: He asked him about this written letter from the record.

Mr. Bowles, Jr.: You are reading from the wrong page.

Mr. Stallard: I don't know what page you are reading from.

Mr. Bowles, Jr.: 26.

The Court: It is almost impossible to disagree.

Mr. Stallard: I don't think it is important enough to.

The Court: I think it is important enough, perhaps, in its implications, but your objection is on the record; what is your objection?

Mr. Stallard: I don't know the background of these letters. Mr. Whitney may have had some reason for writing the letter. I don't know why he wrote it. He is dead, and I can't examine it.

Mr. Bowles, Jr.: That is Exhibit 21.

Mr. Stallard: We are speculating—back in 1946—it would be a speculation, what was meant by these letters. You say you can construe them, but I often think that if you [fol. 117] get a little information from people who write contracts, and why they write them, the construction of them is what they do under them, so the construction is important.

The Court: Well, that is the exact question now, your objection is overruled, and I think, at the same time, you may note your exception.

Mr. Stallard: I except for the reasons stated.

The Court: That is correct. Now, I want counsel to appreciate this. I am not making any ruling against Mr. Stallard, but I am giving you the benefit of mental process that may be helpful to you. I understand that this practice

of fee-splitting, these two letters plainly show that it purported to be abandoned in 1946, and I have understood to date that it was in full force and effect up until immediately before April 1, 1959.

Mr. Bowles, Jr.: That is correct.

Mr. Stallard: My client filed a suit in 1955, Supreme Court of Illinois, in which they state that the fee-splitting is in existence, and the Court in that case, enjoined them.

The Court: I am merely telling you that there is an implication here that when you say you are going to stop fee-splitting, you don't do it, that is all I am trying to say.

Mr. Stallard: Well, but that is not in any—I can't make [fol. 118] any explanation as to that second letter, but the first letter was firing the lawyer, just firing him.

The Court: I don't think so. Read it carefully. I don't see how you can possibly put that interpretation on it. He speaks of not only pending cases, but future cases, that that regional counsel is going to handle, in that letter.

Mr. Bowles, III: The Exhibit 21, I think adequately explains them, of the background of why the letter was written.

The Court: I just want Mr. Stallard to appreciate the trend of my thoughts without any decision.

Mr. Stallard: Okay.

The Court: And I want you to read that letter from DeParcq, that longer letter of the second, and it doesn't fire him. He refers to the future cases that DeParcq is going to handle.

Mr. Stallard: Well, the evidence further on says he was fired, and I don't think counsel takes the position he wasn't fired.

Mr. Bowles, III: Not because of that.

Mr. Stallard: Well, I construe—President Kennedy construed that this was firing him, that they wouldn't have anything to do with him thereafter.

The Court: I can't agree with President Kennedy on [fol. 119] that. I might state that now, and still I am not deciding that.

Mr. Bowles, Jr.: Well, Your Honor, I realize that, but there is something in the record I want to get straight at this place. At page 26 of Mr. Kennedy's deposition which

we will take up later, you will find that he was asked to read those two letters, and he did do so at that time.

The Court: I understood that.

Mr. Bowles, Jr.: I didn't know whether you did or not.

The Court: I have listened as well as talked, Mr. Bowles.

Mr. Bowles, III: I would like to introduce next, Your Honor, the record in the State of North Carolina, *ex rel. W. K. McLean against C. O. Hice,* et al., consisting of the complaint, one notice, motions, and the final judgment, all stapled together and certified, and I would like to have that marked as Exhibit 24, if Your Honor please.

The Court: Plaintiff's Exhibit No. 24, North Carolina case, identified and filed. You want to comment on this case?

(Plaintiff's Exhibit No. 24, W. K. McLean v. C. O. Hice [fol. 120] case, was marked and received in evidence.)

Mr. Bowles, III: I don't believe at this time, Your Honor, that perhaps could be saved, except to the effect that Mr. McLean who is listed as the secretary defendant, Your Honor, was regional counsel, and he is in St. Louis, Missouri—Illinois, excuse me.

The Court: Now, tell me who are Hice, McLean, Roberts and Mills? Who are they?

Mr. Bowles, III: McLean is regional counsel, or was—he is now dead—for the Brotherhood of Railroad Trainmen in East St. Louis, Illinois. I have got my state right this time, Your Honor. Hice is the regional investigator of the other persons who is named there, individual runners, which this particular attorney employed.

Mr. Stallard: May I ask if Hice is connected with the Railroad Brothers?

Mr. Bowles, III: Hice.

Mr. Stallard: Hice?

Mr. Bowles, III: He was, originally, and left it.

Mr. Stallard: It was Hice, not Rice. I get it. Is he dead or living?

Mr. Bowles, III: Mr. Hice, that I could not tell you. As a [fol. 121] way of not introducing another document, Your Honor, but just to keep the story straight, because we couldn't or did not get this document, the next case in

order was the State Bar of Texas against Hildebrand, which Mr. Kennedy admitted at page 120 he knew all about, and that he had control of that, and he admitted that Hildebrand, who was the regional counsel in Texas, was enjoined and he knew all of the facts of the situation. I just wanted to try to go through these cases in chronological order, and I had to leave out one as an exhibit, and it is not a reported case, and I just wanted to mention it.

The Court: Well, now, one minute. That is a statement of counsel at bar, and not an exhibit?

Mr. Bowles, III: I was merely, for the Court's convenience, putting that in, sir, to be tied up later, in Mr. Kennedy's deposition when that is introduced.

The Court: Oh, very well.

Mr. Bowles, III: But this was purely for the chronological order that these cases occurred.

The Court: Very well, I understand.

Mr. Bowles, III: I would like next to introduce the case of *Hildebrand, et al., against the State Bar of California,* a photostatic copy of the reported opinion in 37 California 2, 504, 225, Pacific 2nd, 508, and I would like that to be [fol. 122] marked Exhibit 25, if Your Honor please.

The Court: *Hildebrand against State Bar of California,* December 20, 1950, identified and now filed as Plaintiff's Exhibit No. 25.

(Plaintiff's Exhibit No. 25, Hildebrand et al. v. State Bar of California, was marked and received in evidence.)

Mr. Bowles, III: Incidentally, by way of comment, Your Honor, that is the same Hildebrand that I mentioned in the other case.

The Court: You mean the Texas case?

Mr. Bowles, III: Yes. The next case I would like to introduce is that of *Atchison, Topeka & Sante Fe Railroad Company against Jackson,* again a photostatic copy, 235 Fed. 2nd, 390, as Exhibit 26, Your Honor, and this is a case similar in purport to the Young case, which was Exhibit No. 21.

Mr. Stallard: What is the name of this case?

The Court: *Atchison, Topeka & Sante Fe Railroad Company.*

Mr. Stallard: You didn't give me that.

Mr. Bowles, III: I thought I did.

Mr. Bowles, Jr.: Against Jackson.

[fol. 123] The Court: Yes, sir, J. W. Jackson, United States Circuit Court of Appeals, 10th Circuit, June 27, 1956. Plaintiff's Exhibit No. 26 identified and now filed.

(Plaintiff's Exhibit No. 26, Atchison, Topeka & Santa Fe v. Jackson, was marked and received in evidence.)

Mr. Bowles, III: That is a suit, Your Honor, where the railroad again is attempting to prevent regional counsel from representing the injured member on account of the solicitation, and it is repetitive of the pattern of the actions of the Legal Aid Department, as to the same general effect as *Young against GM & O.*, Exhibit 21.

The Court: Counsel used the word "pattern," which should be borne in mind always in any further proceedings, not to single the initiative taken alone of any one thing, but these things taken together were injunctions. What we mean by a pattern, I recently had a case in which a pattern played a part, I thought, but I could not comply with the request to enjoin this single instance enumerated, that made up the pattern. I enjoined the pattern. Let's bear that in mind, as I know you will, for future consideration.

Mr. Bowles, III: I would like next to introduce, Your Honor, the opinion of the Supreme Court of Illinois, which [fol. 124] is reported in 13 Illinois 2, 391; 150 N.E. 2, 163. Now, not this copy, but another copy, has heretofore been filed by this defendant as Exhibit 4, in response to the first call for production of documents, and I would like this marked as Exhibit 27.

Mr. Stallard: Is that the opinion?

Mr. Bowles, Jr.: That is the Illinois opinion.

The Court: 1958?

Mr. Bowles, Jr.: May 23, 1958.

Mr. Stallard: Your Honor, I would agree to the introduction of this opinion, and I have the Bill of Complaint certified by the Clerk of the Court, and I wonder if it wouldn't be well to put the certified—they say petition, it

is a Bill of Complaint, we would say—but it is a petition, with the opinion. Would there be any objection to introducing that? It has been certified.

Mr. Bowles, III: Well, I do not have with me, but I have all of the briefs in the case back at the office, and I thought if we were going to put any of it in, we might as well put the whole record in.

Mr. Stallard: That is right. I agree to that.

Mr. Bowles, Jr.: If you don't mind, for the orderly pattern of our presentation, could we save that?

The Court: You have the privilege.

[fol. 125] Mr. Stallard: I just thought it might be helpful to be together.

Mr. Bowles, Jr.: I agree with you, at a later time, with some other things added to it.

Mr. Stallard: All right.

The Court: Plaintiff's Exhibit No. 27 identified and filed.

(Plaintiff's Exhibit No. 27, the Illinois case, was marked and received in evidence.)

Mr. Bowles, III: I would like to offer next, Your Honor, as an exhibit, the case of *State ex rel. Beck*, the Nebraska case by the Supreme Court of Nebraska. I would like to introduce this in three parts, as Exhibit 28, and the date of that is May 6, 1960, the decree; as Exhibit 28-A, the opinion of the same Court dated May 6, 1960.

The Court: This is Plaintiff's Exhibit 28. It is now identified and filed. That would be 28-A?

Mr. Bowles, III: Yes, sir.

The Court: 28-A is now identified and filed.

(Plaintiff's Exhibit No. 28 and 28-A, a decree and an opinion, were marked and filed in evidence.)

[fol. 126] Mr. Bowles, III: And as Exhibit 28-B, Your Honor, the stipulation of counsel dated April 8, 1960, in the same case.

The Court: This is 28-B?

(Plaintiff's Exhibit No. 28-B, stipulation in the Nebraska case, was marked and received in evidence.)

Mr. Bowles, Jr.: If your Honor please, I will say this to the Court at this point in the record, solely for the sake of continuity. We had a witness that we wished to present to the Court, but it is now 4:30, and if Your Honor doesn't mind, I am sure you will not, we will go on with this sort of performance, which takes up our time, and defer the thing that we would normally have done at this stage until tomorrow morning.

Mr. Stallard: I would object to that exhibit, Your Honor.

The Court: Which exhibit, now?

Mr. Stallard: That is 28-B, for the reason stated heretofore in the record. Stipulation of counsel would not be binding upon this Court or this lawyer or the parties in Nebraska.

The Court: The stipulation on behalf of the Grand [fol. 127] Lodge Brothers of Railroad Trainmen?

Mr. Bowles, III: And Mr. Kennedy, in his deposition, testified that he not only knew about the case of State ex rel. Beck, but that it was under his supervision and control, and that the decree was entered under his supervision and control.

The Court: This was signed on behalf of the Brotherhood by its attorneys.

Mr. Stallard: Your Honor, I am not familiar with all the issues involved in that case, and I don't know that they would be identical to the issues here. Therefore, I object to it affecting the same issues in this court. It may be, I have never seen it. Counsel passes it up to you. I have never seen it before in my life.

Mr. Bowles, III: He was notified of their existence and the fact that we intended to use them, Your Honor, on the 29th day of September.

Mr. Bowles, Jr.: Just so that the record being now made can serve as an appropriate and helpful index, I just ask that it be noted that Mr. Kennedy's testimony regarding that matter is at page 121 of his deposition, which we will discuss later.

Mr. Stallard: Your Honor, in view of reading this, I withdraw my objection.

[fol. 128] The Court: Yes, sir.

(Discussion off the record.)

The Court: Now we will go back on the record.

Mr. Bowles, III: I would like to introduce next the copy of the consent decree in the *State of Oklahoma, ex rel. Oklahoma Bar Association against the Brotherhood of Railroad Trainmen, et al.* This decree in record No. 38373 is dated April 29, 1960, and this also refers to past acts. I would like to introduce this as Plaintiff's Exhibit No. 29.

The Court: Plaintiff's Exhibit 29 is identified and filed.

(Plaintiff's exhibit No. 29, the Oklahoma case, was marked and received in evidence.)

Mr. Bowles, Jr.: Now, Your Honor, inasmuch as we are using, to a certain extent, this record as a kind of index, I ask that reference be made to Mr. Kennedy's deposition at page 122, where he said that that stipulation in that case spoke for itself.

The Court: I don't want to stop early, but I ask counsel to come in chambers with me at this time. Is that a good place to stop?

Mr. Bowles, III: Well, we are at Exhibit 29. It would [fol. 129] not take us too long, I think, to get to 37, and that would be a somewhat logical stopping point.

The Court: Very well. Let's get onto it as fast as we can. I want to have a few minutes, and I cannot stay until after five o'clock.

Mr. Bowles, Jr.: Suppose we stop after the next two exhibits?

Mr. Bowles, III: Yes. That is also a logical stopping point.

The Court: All right, stop at the next two.

Mr. Bowles, III: I would like to introduce the consent decree in the case of *Hulse et al. against the Brotherhood of Railroad Trainmen*, the consent decree entered by the Supreme Court of Missouri, in record No. 47293, dated November 14, 1960. I would like this marked as Exhibit 30.

Mr. Stallard: Is this Missouri, you say? This is a Missouri case?

Mr. Bowles, III: Yes.

The Court: This, now, is No. 30. Exhibit No. 30 is identified and filed.

(Plaintiff's Exhibit No. 30, Hulse et al. v. The Brotherhood of Railroad Trainmen case, was marked and received in evidence.)

[fol. 130] Mr. Bowles, III: I would like to introduce next, Your Honor, the complaint and other papers in the *State Bar of Michigan against the Brotherhood and others*, consisting of the complaint, the answer to the bill of complaint, the plaintiff's reply to defendant's answer; the proceeding commenced in the latter part of January 1959 in the Circuit Court of Jackson County, Michigan, which is now pending, and in which the same answer or same type of answer as filed in our suit, was filed in that suit. I would like that marked Exhibit 31, if I may, Your Honor.

Mr. Stallard: Your Honor, I would object to that, on the ground that that is a pending suit, and no one knows the disposition, although I understand that the Bar up there is not pushing that suit, for some reason. We have gone up there for trial once or twice, and they won't push the suit.

Mr. Bowles, Jr.: We introduced, Your Honor, the Complaint and the Answer only.

Mr. Stallard: May I say this, Your Honor, I am informed by Mr. Chase that the Bar has withdrawn the suit, so there is some difficulty in that suit.

Mr. Bowles, Jr.: We have asked for it because we are interested in the Answer filed by the Brotherhood; that is what interested us.

[fol. 131] Mr. Bowles, III: That, Your Honor, is a logical stopping point.

The Court: I understand. Now, about this exhibit, I am having a little trouble about the petition. Anybody can say anything they want. The Answer in this suit is a position taken by the Brotherhood in the Answer; if it is pertinent, that would be admissible.

Mr. Stallard: I would say any admissions against interest would be, but I would have to study the bill, and know the Answer, and know why, what reason. I really don't,

I have never seen the Answer, and I don't know anything about it.

The Court: Mr. Stallard may have this overnight in order that he may inform himself and read it. I will not file No. 30 at this time.

Mr. Bowles, III: It is 31, if Your Honor please.

The Court: Yes, sir.

Mr. Bowles, Jr.: If Your Honor please, if I may say this—

The Court: Now the Court will recess until ten o'clock tomorrow morning, and I will ask counsel to come in chambers.

Mr. Bowles, Jr.: Your Honor, may I just, before you [fol. 132] recess, at page 125, of the president, Mr. Kennedy's statement, he appeared to know all about this proceeding that we are just discussing as Exhibit No. 31.

The Court: Let's postpone everything about 31, Gentlemen, until tomorrow morning.

(Whereupon, the court adjourned until tomorrow, October 10, 1961, at 10:00 a. m.)

[fol. 133] October 10, 1961

(The case was reconvened pursuant to adjournment on yesterday, at 10:00 a. m.)

The Court: I believe you have already made a statement on Exhibit No. 31.

Mr. Bowles, III: I have, but I would like it marked as Exhibit No. 31, please.

The Court: Plaintiff's Exhibit No. 31 identified and filed. Add to that, no objection to the filing being proposed. That finishes 31, I believe.

Mr. Bowles, Jr.: Yes.

(Plaintiff's Exhibit No. 31, regarding the Nebraska case, was marked and received in evidence.)

Mr. Bowles, Jr.: Call Mr. Robert A. Nelson, please.

ROBERT A. NELSON was duly sworn and testified in behalf of the plaintiff, as follows:

Direct examination.

By Mr. Bowles, Jr.:

Q. Mr. Nelson, would you state your name, age, and oc-
[fol. 134] cupation, please?

A. Robert A. Nelson, fifty-eight. I am an attorney at law residing at Lincoln, Nebraska.

Q. Did you have occasion to be associated with the Attorney General's office in Nebraska in connection with the case of State ex rel. Beck against certain defendants?

A. Yes. I was acting as a Special Assistant Attorney General in the prosecution of that case.

Q. Now, who were the defendants in that case?

A. The Brotherhood of Railroad Trainmen and Phillip B. Lush, an attorney from Minneapolis, Minnesota, several local lodges of the Brotherhood, and a number of the officers of the local lodges, Mr. Gail A. Clinkenbeard, who was a so-called investigator for the Brotherhood of Railroad Trainmen. I would have to have the file to enumerate all of the particular defendants.

Q. Were you the attorney designated by the State to try, and did you try that proceeding?

A. Yes. I might say that I did not participate in the original filing of the complaint. That was handled by Mr. John Samson, who was a practicing attorney in Omaha, and was designated as a Special Assistant Attorney General. There was some proceeding, I believe a motion to quash, filed against the original complaint which was
[fol. 135] sustained by our Court. We were given time to amend, and it was at that time that I was employed by the Attorney General and prepared the amended complaint and handled the prosecution from there on, together with Mr. Samson.

Q. Now, Mr. Nelson, I state to you that Mr. Kennedy, the present president of the defendant Brotherhood in this proceeding, stated on his deposition as follows, and I put this question to him, Your Honor, purely for the pur-

pose of connecting up, not for the purpose of commenting before him.

"Q. I hand you what purports to be an exhibit in that proceeding, State ex rel. Beck in Nebraska, 8 pages; these are photostats, and ask you whether or not you have even seen these records before?

"A. These records, as I recall, are records in the State of Nebraska proceedings—

"Q. That is right.

"A. —which have now been satisfactorily disposed of. They came to Cleveland and with our permission they went through our books and whatever record they found there was the accurate record that we will have to subscribe to."

I am reading from page 99 of that deposition. Now, are [fol. 136] you personally and individually, Mr. Nelson, the "they" referred to in that statement? Did you go to Cleveland and see the records in the home office of the Grand Lodge of the Brotherhood?

A. I did, together with Mr. John S. Samson.

Q. Now, would you state to His Honor the circumstances under which you did go there, and how you happened to go there, and the part of the proceeding that took place, in order to get you there?

Mr. Stallard: Well, Your Honor please, I object to all this on the ground that the record here, the complete record, is before the Court, and the details of how they got the record would not be pertinent to the issues here at all, whether we are practicing law in Virginia or not.

The Court: Objection is overruled.

Mr. Stallard: Exception for the reason stated.

Mr. Bowles, Jr.: I want to correct one statement by Mr. Stallard. Mr. Stallard, that the complete record is not here before the Court, and I think it just as well at this time to clarify that point with the Court. The Clerk, through some mishap, failed to send part of the record, and that is in the mail now, with its due authentication on [fol. 137] it. We have a carbon copy of it here, and that will arrive during the day, and can be put in with an

authentication according to the Act of Congress. Now, that isn't the reason I am asking this question, sir, I just want Your Honor to understand that some of the record is not yet before the Court.

By Mr. Bowles, Jr.:

Q. Now, Mr. Nelson, you note in what was stated here, "That they came to Cleveland and with our permission went through our books." Now, I want you to tell whether that was a voluntary thing; how it came about that you went to Cleveland?

A. Well, ours was an original action filed in the Supreme Court of the State of Nebraska, and was not only a complaint for injunctive relief, but also asking for a citation for contempt of court. The Supreme Court appointed a referee for the purpose of taking testimony, making his report of findings of fact, and conclusions of law to the Court, for their final determination. We filed a request for answers to interrogatories, and a request for production of documents before the referee. Objections were filed to those; however, their objections were overruled. The counsel then for the defendants appealed that decision to the Supreme Court, the Court sustained the [fol. 138] referee, and there is an opinion on that. Their contention was that this being a contempt action, was a criminal action, and, therefore, that they were not required to produce the documents or answer interrogatories.

The Court held that this was neither civil nor criminal, it had some of the attributes of each, and was an action sui generis.

Mr. Stallard: Your Honor please, I want to interpose an objection here. He is speaking what the record held. That would be the best record, and I object to that.

Mr. Bowles, Jr.: We have that to present, Your Honor.

The Court: I understand that. I understand that the complete record is coming. The objection is overruled.

Mr. Stallard: Exception.

Mr. Bowles, Jr.: Moreover, that is a reported opinion, sir, what he is referring to now.

A. I am sorry, I can't give you the citation. I neglected to take it down. It is in the Northwestern Reports. Then the Court, having sustained it, overruled the objections. We agreed instead of them producing their records, bringing them all to Nebraska, we offered to go back there, and [fol. 139] view their records and decide what we needed and have copies made. It was on that basis that we went back, and also, counsel for the defendants, their local counsel, were present.

By Mr. Bowles, Jr.:

Q. Who was that?

A. Let's see, we went to Minneapolis, first, to the law office of Mr. Chauncey Barney.

Q. I meant in Cleveland, sir.

A. I believe he was the only one there.

Q. And at Cleveland?

A. And at Cleveland, Mr. John Binning of the firm of Crosby, Pansing, Guenzel, & Binning, the Brotherhood counsel.

Q. Now I understand you did go to Cleveland?

A. Yes, sir.

Q. And they made their records available to you in response to the order of the Court?

A. They did.

Q. And you were allowed to examine them and copy them?

A. Yes.

Q. Now, who furnished you the copies; who did the copying?

A. The copying was done in the Brotherhood office. We had made an arrangement to have them photographed by [fol. 140] an independent concern, but Mr. Maher stated that they didn't like the idea of the records going out of the office, and they had a process where they could make the copies and were willing to do so, and of course the State of Nebraska paid for the copies.

Q. Now, Mr. Nelson, you said Mr. Maher. Who is that?

A. Well, he was, I believe his designation was secretary of the Legal Aid. I couldn't be sure of that title.

The Court: What is that name? I didn't catch it.

Mr. Bowles, Jr.: C. R., I believe, are his initials, Maher. I have heard it pronounced a number of different ways. I am not sure about that.

The Witness: I may not be pronouncing it correctly.

By Mr. Bowles, Jr.:

Q. I don't know how you pronounce it, but he was what I believe they called a Chief Clerk of the Legal Aid Department; is the way.

A. I think that is correct.

Q. We have correspondence to put in about it. Now, Mr. Nelson, did you bring with you the original photostats that were furnished to you by Mr. Maher at that time? [fol. 141] Have you got them with you?

A. I brought with me part of them, not all of the records we copied.

Q. Would you show to the Court what it is that you did bring with you?

A. Yes.

Q. That you got directly from those officers.

A. Well, I will start with this one.

Q. Your Honor, I am wondering whether or not he might not make use of a table or something, because I think he wants to point out to you personally some of these exhibits, and we don't have copies of them.

A. I think this will do. I don't like to turn my back to counsel here.

Q. Now, Mr. Nelson, will you tell me, first of all, please, sir, whether or not in the records that were presented to you in your case and copies of which you took and have brought here, have any relationship to the contributions made by regional counsel to the Legal Aid Department in certain years?

A. Yes, they do.

INTRODUCTION OF PLAINTIFF'S NELSON EXHIBITS A THRU M WITH COMMENTS OF BOTH PARTIES

Q. Well, now, let's talk about that batch first, and let's undertake to tell the Court what you have there, and how

many pieces of paper they are, and what years they relate [fol. 142] to, and what they show.

A. This is a copy of their records showing the contributions made by regional counsel for the expenses of operating the Legal Aid office of the Brotherhood, for the years 1953 to 1958, inclusive.

Q. Now, do you recall what book that came from?

A. As I remember this, these records were on just Senate pads.

The Court: I didn't catch the word.

By Mr. Bowles, Jr.:

Q. You mean this kind of a thing (indicating)?

A. Yes, either that or white paper, similar to that. They were not in any book.

The Court: Indicating a Blackstone tablet? I know what that is.

By Mr. Bowles, Jr.:

Q. I have learned that they call them Senate pads in Nebraska.

The Court: That word is strange to me.

Mr. Stallard: Your Honor, I would like to call attention to the Court that our answer admits that the regional counsel did make contributions, so this is admitted by the Answer, and this is going to be the details, [fol. 143] as I understand it, but we admit this.

Mr. Bowles, III: We called for these documents, and you produced some of them, but said you didn't have others.

Mr. Bowles, Jr.: That's right, and also, this is going to show how much.

Mr. Stallard: Well, I don't understand. If it would be any amount, a million or five thousand, it would be the same. We admit the contributions.

Mr. Bowles, Jr.: I disagree, Your Honor.

The Court: I will overrule that.

Mr. Stallard: Make exception, please.

By Mr. Bowles, Jr.:

Q. Now, the first one that you have there, the first batch that you have, shows the contributions from '53 to '58, you say?

A. That is correct.

Q. Now, would you read to the Court, please, sir, the amount of contributions made in the several years by Mr. Bernard Savage appearing on that list?

A. In 1953, Mr. Savage's contribution was $4,173. Do you want each year?

A. Yes, each year, please.

A. In 1954, his contribution was $2,722.50. In 1955, it [fol. 144] was $1,821.72. I seem to have two sheets on '55; however, one of them appears to be a record before the payments were completed. It shows total owed on that one by Mr. Savage of $1,821.72. This one apparently was the record entered, and then the second one shows when the payment was made, so that is the same figure. In 1956, Mr. Savage contributed $5,028.60. In 1957, $2,076.01. In 1958, $1,020.

Q. Now, does any of that record show when the 1958 payment was made?

A. February 12, 1959 shows the payment, date received.

Q. That $1,020 was made February 12, 1959?

A. That is correct.

Q. Now, would you file that, please, and, if Your Honor please, may I keep the continuity by making this Nelson Exhibit No. 1?

The Court: Just Exhibit A, I believe. There are not going to be too many. This Exhibit Nelson A, Exhibit Nelson A consists of 7 sheets, if I have counted them correctly, now identified and filed.

(Plaintiff's Nelson Exhibit No. A, a record, was marked and received in evidence.)

The Court: Did Mr. Nelson state when this examination [fol. 145] was made?

By Mr. Bowles, Jr.:

Q. He has not, as I recall, sir. Do you recall when this was done?

A. I think it was the last day of August, 1959.

Q. In Cleveland, Ohio?

A. Correct.

Q. Now, do you have a similar record there from the years 1951 and 1952?

A. I have a record which relates solely to the firm of Davis, Yaeger, McGinley & Lush, and it shows on there when payments were made to the Brotherhood; also, salaries that were paid by the Brotherhood to certain of these regional investigators.

Q. Now, do the names of them show on there?

A. Not on this exhibit, I don't believe.

Q. Now, Mr. Nelson, I ask you this: You are interested in a piece of litigation in *ex rel. Beck* case which had to do with which one of these regional counsel; what was that firm?

A. Well, we had two firms involved. First, Davis, Rerat, Yaeger & Lush, and then that firm was dissolved, I believe, on December 31, 1955. They separated, and Davis and Lush formed a separate firm. So we had both of those [fol. 146] involved; however, the territory was divided up at the time of the dissolution of the firm, and the Nebraska territory which had been previously assigned to the Davis, Rerat, Yaeger & Lush firm was given to Mr. Lush or Davis & Lush.

Q. Now, I take it when you went there to investigate these records, you were not interested in the records relating to Mr. Savage?

A. No, we were confining that to the parties involved in our litigation.

Q. Can you tell this Court when you examined those records, whether or not similar records were there that you are now talking about, showing the same types of things with relation to the other regional counsel?

A. Yes. There were records for other regional counsel. However, I paid no particular attention to them. We skipped those. We asked for the ones we wanted.

Q. You did not examine the records that were there showing the relationship and the payments and so forth between the Legal Aid Department of the Brotherhood and Mr. Bernard Savage?

A. No.

Q. But there were such records?

A. Yes, there were.

Q. Now, sir,—

[fol. 147] A. I might state, if that would help any, that my information shows that that was taken from book No. 1.

Q. Now, this book is headed "Membership and System Register," and what is at the top of this?

A. Well, that is DYMcG & L, Davis, Yaeger, McGinley & Lush.

Q. And these papers, I take it, show a running account with that firm?

A. That is correct.

Q. I ask you to file that, if you will, please, sir, as Nelson Exhibit B.

The Court: Identified and so filed, Nelson Exhibit B, consisting of 4 photostat sheets.

(Plaintiff's Nelson Exhibit B, an account, was marked and received in evidence.)

By Mr. Bowles, Jr.:

Q. Mr. Nelson, I call your attention to a mistake that I have made in regard to the years that I have covered, the paper that you have filed as Nelson Exhibit B is the account for 1959 through '51, I believe?

A. No, 1949.

Q. '49, I mean.

A. To '51.

[fol. 148] Q. I made another mistake, so Exhibit B covers '49 to '51. Now, do you have another record that you obtained there, that shows the record for '51 and '52?

A. Yes, I do. That was taken from a different book. I have an indication for information from book No. 2.

Q. Now, what does that show, sir?

A. Well, that also shows a running account with the firm from January of 1952, and also I have attached thereto—yes, then it shows payments made in '52 for '51 expenses. It also, on the last sheet thereof, contains a list of other regional counsel. I don't know why we took that.

Q. Now, I ask you to file that, please, sir, as Nelson Exhibit C.

The Court: Nelson Exhibit C, consisting of 4 photographed sheets, filed as Nelson Exhibit C. I understood the witness to say that this had to do with the firm—what did you mean by "the firm"?

The Witness: Oh, the firm of Davis, Yaeger, McGinley & Lush.

(Plaintiff's Nelson Exhibit No. C, an accounting, was marked and received in evidence.)

The Court: A firm of attorneys?

The Witness: At that time, a firm of attorneys in Min-
[fol. 149] neapolis, Minnesota.

The Court: Yes, sir.

By Mr. Bowles, Jr.:

Q. Now, before we pass on to the next exhibit, Mr. Nelson, I ask you to give your attention to Exhibit—Nelson Exhibit A, and turning to the fifth page which relates to the showing of contributions by the regional counsel to the maintenance of the Legal Aid Department in the year 1959, I ask you whether or not, sir, this particular account for that particular year undertakes to show what the gross take of each of these attorneys was for that year, and the gross amount of recoveries which they had undertaken to represent members in?

A. Yes, it does.

Q. Now, Mr. Henslee, I believe the record shows, was the general counsel for this company, this association, was it not?

A. I understood—I don't know whether that is shown by the exhibit or not.

Q. I understand that.

A. Yes.

Q. His son, Mr. Edward Henslee, is now the general counsel, I believe?

A. I think that is correct.

[fol. 150] Q. Now, in 1955, how much was the gross amount of recoveries that Mr. Henslee had in that year of 1955?

A. $2.908,853.68.

Q. What was his percentage that he had to contribute of his fees on that amount to the Brotherhood as shown on that exhibit?

A. Well, I don't think it is the percentage of his fees. It is the percentage of the total cost of operating the Legal Aid Department.

Q. Now, what was that percentage?

A. 33.5 percent.

Q. That is based, I believe, according to the scheme and system on the percentage that his gross take bore to all the others?

A. Yes. I think that was explained to us by Mr. Maher.

Q. Now, in that year he made a contribution of how much?

A. $19,109.25.

Q. Who is the next one of that list there?

A. The next one was the firm of Davis, Rerat, Yaeger & Lush. They were the Minneapolis attorneys that had the Nebraska territory at that time.

[fol. 151] Q. That is the firm that you were interested in?

A. Yes, one of the two we were interested in.

Q. How much was their gross amount of recoveries for members?

A. $1,888,037.02.

Q. And what percentage did they pay, what is shown there for that firm?

A. 21.777.

Q. And what was their contribution?

A. $12,412.89.

Q. Now in that same year, sir, is Mr. Savage shown?

A. Yes, sir, he is.

Q. Tell me what his gross take is?

A. Yes. $273,750.

Q. What was his percent?

A. 3.196.

Q. And in that year, how much did he contribute?

A. $1,821.72.

Q. Now, sir, would you look at the year '54; are the same sort of figures carried on that one?

The Court: What was the first year that he was addressing himself to?

Mr. Bowles, Jr.: That was '55, 1955.

[fol. 152] A. Yes, they are shown for '54, also.

By Mr. Bowles, Jr.:

Q. What was Mr. Henslee's take in that year?

A. $2,892,993.60.

Q. And his percent?

A. 35.86.

Q. And his contribution?

The Court: What year are we talking about now?

A. '54; $18,795—wait a minute—there are two figures here.

By Mr. Bowles, Jr.:

Q. He carried over an owing balance at the end of the year, did he not, of $929?

A. Oh, that's right, his total apparently was $19,723. And then there was a credit of $927.18 that he had partly been overpaid.

Q. And that year, what was the gross of the Davis, Rerat, Yaeger & Lush?

A. They had $1,743,513.26.

Q. And their percent?

A. 21.67.

Q. And their contribution?

A. $11,918.50.

Q. Now, what was Mr. Savage's gross in that same year [fol. 153] of 1954?

A. $387,894.

Q. And his percent of contribution?

A. 4.95.

Q. And the amount of his contribution?

A. $2,722.50.

Q. Do any of these other years indicate the gross amounts, other than '54 and '55?

A. No, I don't believe they do.

Q. Would you look at '54 again, and tell us what Mr. Hildebrand's gross was in 1954?

A. Mr. Hildebrand's recoveries were $960,657.93.

Q. And that is in '55?

A. Oh, yes, that is '55.

Q. That's right, and in '54?

A. And in '54, it was $747,937.48.

Q. Have you got it on there, any showing for either of those years for Lewis & Lewis?

A. L & L, I assume that is Lewis & Lewis, yes.

Q. Now, in 1954, what was their gross?

A. $166,523.20.

Q. And in '55?

A. $175,964.08.

Q. Do you find Mr. Rives on there, on either of them?

[fol. 154] Mr. Stallard: Your Honor please, I object to this, please, because I don't think this attorney knows who Mr. Rives is, unless he personally knows him, he is reading something off a photostatic copy.

Mr. Bowles, Jr.: If Your Honor please, I can't do it all at once. I expect to show who Mr. Rives is, and will directly.

The Court: Well, he is undertaking to look through a document to see if Rives is on that document.

Mr. Stallard: As he said, he had L. & L., and he assumed that was Lewis & Lewis.

The Court: You know whether it was or not?

Mr. Stallard: No, sir, I don't know. I would assume, too.

The Court: I was hoping it was stipulated.

Mr. Stallard: I just don't know, but I would assume.

The Court: Rather than say L. & L. shows so-and-so.

Mr. Bowles, Jr.: This purports, if Your Honor please, to be a list of regional counsel in that year. We will show by the director, Messrs. Lewis & Lewis, which, I presume, [fol. 155] were L. & L., were regional counsel in that year.

The Court: I merely suggested that the witness in answer to your question about Lewis & Lewis, says he found an item, L. & L., without any assumption, if you please.

Mr. Bowles, Jr.: That is correct.

By Mr. Bowles, Jr.:

Q. Do you find R & R on there?

A. Yes, I do, in 1954.

Q. For '54, what about R & R, their gross?

A. $199,845.46.

Q. How about in 1955 for R & R?

A. May I ask who R & R is?

Q. I propose to show that Mr. Rives was a regional counsel in those years, so that is the only "R" I see on that particular one, but here is a JR & P, if that is it; how much is JR & P? Well, the exhibit speaks for itself.

The Court: It hasn't been put in, or has it been put in?

Mr. Bowles, Jr.: Yes, it has been put in.

A. There is JR & P.

By Mr. Bowles, Jr.:

Q. I just wanted to call to Your Honor's attention some [fol. 156] of these amounts. Now, Mr. Nelson, in connection with the defendant regional counsel firms that were defendants in the same case in which the Brotherhood was a defendant, do you have with you the records from that firm that correspond in amounts with the contributions shown by the records of the Brotherhood paid by this firm?

A. Yes, I have records here that list the individual investigators that were being paid monthly or semi-monthly by the Brotherhood, and the contributions that were made by the firm to reimburse the Brotherhood. When I say "Brotherhood," I guess I should say, the "Legal Aid of the Brotherhood."

Q. Now, stop on that just a moment, sir. Do these records show whether or not the regional investigators had deducted from the salaries paid them by the Brotherhood, their—what do you call it—their railroad retirement pay and unemployment pay, as if they were operating members of the Brotherhood?

A. Yes, I am not sure of the particular exhibit. I was looking at them.

Q. Well, do you have records here that show that, that fact?

A. Yes, I do, and I believe some of that is shown in this particular group that I have here, but not as complete maybe as some other exhibit.

[fol. 157] Q. Well, when we speak as you are testifying from these exhibits now, about the salaries paid by the Brotherhood to the regional investigators which complete total amount was reimbursed, or part of it reimbursed, by the regional counsel to the Brotherhood Legal Aid Department, that salary, I understand, your records show carried with it deductions for railroad retirement under the Act, and also the unemployment?

A. Yes.

Mr. Stallard: Your Honor please, counsel is leading his own witness, by suggesting answers, and also, I take the position this witness doesn't know anything about it. He says social security, and used the word social security.

Mr. Bowles, Jr.: No, I didn't say social security.

A. You said retirement, and then he said social security.

Mr. Bowles, Jr.: No, railroad unemployment, sir; railroad unemployment is what the record shows.

The Court: Well, we will see by the records.

Mr. Stallard: I don't believe this witness can testify to those things, unless he knows of his own knowledge.

[fol. 158] The Court: I understood the witness to say that what he has testified to is shown by certain records of the Legal Department of the Brotherhood, which he has available.

Mr. Bowles, Jr.: That is correct.

Mr. Stallard: Well, if he can tell what they are, I would like for him to tell in language, not just assume that it is retirement, and assume that.

Mr. Bowles, Jr.: I acknowledge, Your Honor, that I, perhaps, am technically leading; I am trying to save time because I want to get to this record, and I want to point that out at the appropriate time. I concede very fully that this witness has, I imagine, no specific knowledge of his own about that. I am asking what this record shows.

The Court: I think that is not objectionable. Avoid leading, as much as you can.

Mr. Bowles, Jr.: I shall do so, sir.

Mr. Stallard: Your Honor please, I would like to interpose, the record speaks for itself, and if he introduces it, it is interpreting the record, and I think the record will speak for itself, Your Honor. You can interpret that.

The Court: The exhibits do speak for themselves, and [fol. 159] there is no use reading into the record precisely what any exhibit says, that is right, but if there is an obscurity in the record, the Court will welcome any association that might aid the Court.

Mr. Stallard: I will go along with that.

The Court: I believe we understand each other.

By Mr. Bowles, Jr.:

Q. Yes, sir, I think so. I am merely trying to point out to the Court certain specific items that I wish the Court to look at, through this witness.

A. May I correct an answer? I think I stated that this man didn't show it, but it does show the salary, the railroad retirement tax, and the unemployment contribution.

Q. That is what I had reference to.

The Court: Now, what document are you now reading from?

A. This has not been identified as yet.

Mr. Bowles, Jr.: I am getting ready to introduce it now, and I wanted to point that out to Your Honor, so that you would see that particular thing.

The Court: All right, I wish you would file it first.

Mr. Bowles, Jr.: I stand corrected, sir. I think that is [fol. 160] a much better method of procedure.

By Mr. Bowles, Jr.:

Q. Now, what is this that you have in your hand, and where did you get it from, and where did it come from, and I will then ask you to introduce it as Nelson Exhibit D.

A. Well, this was taken from book No. 3, and relates to the firm of then, Davis, Rerat, Yaeger & Lush, and shows

the salaries of the regional investigators that were being reimbursed to the Legal Aid, and covers—well, it runs clear through 28. However, perhaps I should explain that this is not just a straight running account through that book, and I have the indications here of the pages that locate the information.

Q. Would you please state in the record, what pages you got that from in that book?

The Court: Pages of the book of the Legal Aid Department?

Mr. Bowles, Jr.: That is correct.

A. Yes.

Mr. Bowles, Jr.: Now, I will explain that, Your Honor, because he was only interested in this one firm and that is why it skips from page to page.

A. Well, these are pages, 24, 25, 26, 27, 28, 29, 78, 79, 80, 81, 82, 83, 98, 99, 100, 101, 106, 107, 108, 109, 110, and 111.

[fol. 161] By Mr. Bowles, Jr.:

Q. Now, could you tell us whether or not that book that you had reference to, had similar records with regard to other regional counsel?

A. Yes, in between these pages were records relating to others.

Q. Now, Mr. Nelson, if you will file that as your Exhibit D with your testimony, and then would you please—

The Court: I will file it first.

Mr. Bowles, Jr.: Yes.

The Court: Plaintiff's Exhibit Nelson D is filed, identified and filed.

(Plaintiff's Nelson Exhibit No. D, records, was marked and received in evidence.)

By Mr. Bowles, Jr.:

Q. Now, Mr. Nelson, would you please, sir, come around and point out to the Court the matters about which I was asking you a moment ago on that exhibit, with relation to

the railroad unemployment tax and the railroad retirement tax?

The Court: Now, may I, before you do that, in your zeal and anxiety—I can't keep lawyers from reading into the [fol. 162] record what exhibits show—why can't you point it out to me in argument, just as well as the witness can?

Mr. Bowles, Jr.: You use the term "just as well as," sir; I am interrogating the witness that tried this case, and I think he can explain it so much better than I can, to Your Honor; that is the only reason that I have asked him to do that.

The Court: You just asked him to point out how those show, and where they show. They are before you.

Mr. Bowles, Jr.: That's right, sir.

The Court: Merely a suggestion. We don't want to go on forever.

By Mr. Bowles, Jr.:

Q. What names indicated there on that record as being the investigators paid by the Brotherhood and assigned to that particular firm for operation?

A. Well, as of January, 1954, there were the following: I. K. Byers, B-y-e-r-s, L. J. Calkins, G. A. Clinkenbeard, W. P. Maroony, and G. J. Rerat. Now, there have been changes later on; some of these are eliminated, some others added.

Q. Well, now, would you just briefly thumb through this, [fol. 163] and tell me the names of any others that might have been added? There is McNurlan on there.

A. Yes, in October '54, McNurlan appears.

Q. Now, explain to the Judge at the first page of that exhibit, what the situation is about, and what is shown there about the railroad retirement plan; just take Mr. Clinkenbeard as an example.

A. Mr. Clinkenbeard was paid a salary of $400 a month, and his railroad retirement tax was $18.75 per month, his unemployment compensation contribution was $1.50 per month.

Q. Now, that is railroad unemployment, I believe, isn't it?

A. Yes, that is what it is.

Q. Now, is there anything on this particular Exhibit D that you have that shows the contribution, or how this thing worked, about who actually paid that money to him?

(Discussion off the record.)

By Mr. Bowles, Jr.:

Q. Now, what I am asking you now is, do you have from the records that you took from the Brotherhood office, that they gave you in response to your call, do you have correspondence relating to the matter of how these men got [fol. 164] on the payroll and at whose request, and who paid them, and why?

A. Yes, I have some correspondence relating to that.

Q. Would you have—well, first of all, would you file that, please, as Exhibit E?

The Court: Recess until 11:25, please.

(Recess)

The Court: Mr. Stallard is looking at proposed Nelson Exhibit E.

A. You want this identified now?

Mr. Bowles, Jr.: Yes, if you will, please.

Mr. Stallard: Your Honor, I have examined that and it appears that the lawyers paid the investigators' fee separate from the contribution. I will be glad to stipulate it, because I think that is what took place. I think the correspondence shows that, or it doesn't show it, but that is my conclusion. I think that that is a true statement.

Mr. Bowles, Jr.: Well, I am very pleased to stipulate that, sir, but I would like to have my exhibit marked, just the same.

Mr. Stallard: That is all right.

[fol. 165] The Court: You do not object to this?

Mr. Stallard: No, sir.

The Court: Nelson Exhibit E is identified and now filed.

(Plaintiff's Nelson Exhibit No. E, an account, was marked and received in evidence.)

By Mr. Bowles, Jr.:

Q. Now, sir, Mr. Nelson, I ask you just briefly, will you put into the record here as part of the case that you were interested in, the correspondence from Mr. Kennedy, I believe, the two letters appointing these firms that you were interested in, as regional counsel, just for the sake of the record, please, sir, as Exhibit F?

Mr. Stallard: I will not object to that, Your Honor, if that was taken by this witness from the books at the home office, but if this is some photostat of some photostat machine, I would object to it.

Mr. Bowles, Jr.: I am not undertaking to offer here anything, sir, except what he got. I asked him that to start with.

Mr. Stallard: If that is true, I don't object to it.

The Court: Mr. Nelson, the paper that you now have is [fol. 166] a photostat taken from the books of the defendant Brotherhood?

The Witness: Well, these are two copies of ' rs appointing the regional counsel.

The Court: You obtained them from the Brotherhood office?

The Witness: Yes.

The Court: Made photostats there?

The Witness: That's right, these are the actual photostats that we received.

Mr. Stallard: No objection.

A. We had two copies of each instrument.

Mr. Stallard: No objection.

The Court: Plaintiff's Exhibit Nelson F is now identified and filed.

(Plaintiff's Nelson Exhibit No. F, letters, was identified and received in evidence.)

By Mr. Bowles, Jr.:

Q. Now, do you have the records that you got from the office of the Brotherhood, at the time that you went there and got these photostatic copies of their payroll records on Mr. Clinkenbeard for the years 1951, '53, '54, '56, and

'58, showing the semi-monthly salary payments by Legal [fol. 167] Aid Department of that individual?

A. Yes, I do.

Q. Would you put those in evidence, please, sir, as Exhibit No. G?

The Court: Plaintiff's Exhibit, Plaintiff's Nelson Exhibit G, is identified and filed.

(Plaintiff's Nelson Exhibit No. G, consisting of records of Mr. Clinkenbeard, was marked and received in evidence.)

By Mr. Bowles, Jr.:

Q. Now, Mr. Nelson, I ask you what that Exhibit G came from, from a book—no, not this one—but the one you just filed, Exhibit G?

A. Yes, that came from a book in the Legal Aid office.

Q. Now, did that book also contain similar records with regard to the other regional investigators assigned to other firms?

A. It had that in there, but we didn't pay any particular attention to it.

Q. You were only interested in the regional investigators that had been assigned to the firms that you were concerned with?

[fol. 168] A. That is correct.

Q. Now, have you please sir, the record of the monthly payments by Rerat, Lush, and Yaeger for Mr. McNurlan, Mr. George Rerat, and Mr. Clinkenbeard, the salaries in 1959?

A. Well, I have the records for the year 1959 of the salary charges made to Phillip Lush, Eugene Rerat, Yaeger & Yaeger, and—well, the last pages, the payment of expenses for some of the debts in our case, some of the local officers for attending a conference.

Q. Now, would you file that, please, sir, as your Nelson Exhibit H?

The Court: Nelson Exhibit H, identified and filed.

(Plaintiff's Nelson Exhibit No. H, record of account, was marked and received in evidence.)

By Mr. Bowles, Jr.:

Q. Now, with reference to Nelson Exhibit H, Mr. Nelson, what individuals—well, the exhibit will show for itself. There is one item that I wish to point out in the record, sir. I hand you Nelson Exhibit H, sir, and ask you if you will tell me what is the last date in 1959 for which such charges were made with regard to the payment of those salaries?

[fol. 169] A. Well, this seems to end in August of '59.

Q. August of 1959?

A. Yes, sir, that is correct.

Q. Now, sir, do you have with you any of the exhibits that were filed in the In re Beck case that you tried, and I particularly call your attention to the breakdown sheet of settlement in a case known as the Frye case, and also another known as the Bauer case.

A. Yes, I have those and many others.

Q. Would you file, please, sir, the settlement sheet in the Frye case as an exhibit, Nelson I?

The Court: Exhibit Nelson I is identified and filed.

(Plaintiff's Nelson Exhibit No. I, a breakdown sheet, was marked and received in evidence.)

By Mr. Bowles, Jr.:

Q. Now, do you have another one referred to as the Bauer case?

A. Yes, I do.

Q. Would you file that, please, as Nelson Exhibit J?

A. Yes, I do have it. I didn't have the contract attached, but I don't think you need that.

Q. Is this part of the exhibit?

[fol. 170] A. Well, this was the contract, but it could be attached. It is a contract with the firm.

Q. Which one, Mr. Nelson?

A. With "J"?

Q. With "J," that is the Bauer case.

A. Bauer.

Mr. Stallard: This is Frye.

A. (Continuing) Oh, wait a minute. Was Frye the last one I gave you? Then I got them reversed when you asked me about them, I guess.

Mr. Bowles, Jr.: Exhibit I is Bauer, and Exhibit J is Frye.

The Court: I have Exhibit I as Bauer.

Mr. Bowles, Jr.: I am sorry, I got the names backwards.

The Witness: I picked up the wrong one when you asked me.

Mr. Bowles, Jr.: Is that Exhibit J?

The Witness: Yes, that is Frye then.

By Mr. Bowles, Jr.:

Q. Did you put the contract in there?

A. No, I didn't have the contract.

The Court: Nelson Exhibit J, concerning Frye, identified and filed.

[fol. 171] (Plaintiff's Nelson Exhibit No. J, a contract, was marked and received in evidence.)

By Mr. Bowles, Jr.:

Q. Mr. Nelson, tell us, please, sir, what is a "bird dog"?

A. Well, a "bird dog," we learned, was the term used for a local lodge member who aided in procuring a contract from an injured railroad employee.

Q. Are any bird dogs on Exhibit I and J?

A. Yes, I believe there are on both of those exhibits.

Q. What were their names?

A. May I look at those?

Q. Let's look at the Bauer one first, who were the bird dogs in the Bauer case?

Mr. Stallard: If Your Honor please, I would like for the witness to show how he learned that expression, and see if it is binding on my client; it may not be.

By Mr. Bowles, Jr.:

Q. Have you got the exhibit of the testimony taken in this case with you?

A. Yes, I do.

[fol. 172] Q. Would you file that as an exhibit with your testimony, please, to show where you got the word "bird dog"?

A. I would have two exhibits that would show that; one is the testimony of Mr. Verbon, and the other is a deposition taken of one Marjorie Matson, who was the secretary in the office of the law firm at Cleveland.

Q. Would you file the deposition of Mr. Verbon as Exhibit K, and the deposition of Miss Matson as Exhibit L?

A. Well, Mr. Verbon's testimony is not a deposition; it was direct testimony taken before the referee.

The Court: Transcript of that testimony?

A. (Continuing) And this is the deposition of Miss Matson.

The Court: I didn't catch the name of the first one, the testimony of who?

A. (Continuing) Verbon, V-e-r-b-o-n, I believe it is on the front there.

By Mr. Bowles, Jr.:

Q. K is the Verbon; L is the Matson?

A. Yes, Marjorie Matson, M-a-t-s-o-n.

The Court: Nelson Exhibit K identified and filed.

(Plaintiff's Nelson Exhibit No. K, testimony of Mr. [fol. 173] Verbon, was marked and received in evidence.)

The Court: Nelson Exhibit L, filed and identified.

(Plaintiff's Nelson Exhibit No. L, deposition of Marjorie Matson, was marked and received in evidence.)

By Mr. Bowles, Jr.:

Q. Now, Mr. Nelson, do you have with you also the exhibits that were introduced with Mr. Verbon's testimony?

A. I do.

Q. Would you file those, please?

Mr. Stallard: May I see them?

The Court: Nelson Exhibit M is identified and filed.

(Plaintiff's Nelson Exhibit No. M, consisting of exhibits, was marked and received in evidence.)

By Mr. Bowles, Jr.:

Q. For the record, briefly, sir, would you look at Exhibit J, and tell us what was Mr. Clinkenbeard's commission in the Frye case for obtaining that case?

A. Mr. Clinkenbeard?

[fol. 174] Q. Clinkenbeard.

A. His commission was $3076.67.

Q. Would you read the names of the bird dogs on there?

A. Mr. F. A. Arnold.

Q. How much did he get?

A. $1,500.

Q. Who are the other two bird dogs?

A. William B. Beasley, who received $100 and Walter Harder received $100.

Q. If Your Honor please, the purpose of introducing this exhibit is to show to Your Honor that these are the friendly persons who carried their member to the lawyer for the sake of the member, only in order to be paid $1,500 themselves. That is Tom, Dick, and Harry, sir, that we were talking about the other day.

Now, would you look at the Exhibit I, the Bauer Exhibit, and tell us who were the bird dogs on that exhibit, and how much they were paid?

Mr. Stallard: If Your Honor please, I object to that, because this exhibit does not show anything like that; that is a reference that the counsel is putting on there, these men's names are on there, but I don't know what they are.

[fol. 175] Mr. Bowles, Jr.: Your Honor, it is all testified to in that exhibit; that is the reason I am asking.

Mr. Stallard: It is not tied up with this exhibit.

Mr. Bowles, Jr.: Yes, sir.

Mr. Stallard: Well, read it.

Mr. Bowles, Jr.: That is what I am asking the man who tried the case, to read it.

Mr. Stallard: There is a man, Frank Arnold, $1500. I don't know who he is.

A. He was a defendant in our case. He was an officer of a local lodge.

By Mr. Bowles, Jr.:

Q. Was he charged with receiving that money and participating in this thing?

A. Let me see. Yes, this Frye case was one of the counts in our complaint. I am quite sure. Leo E. Frye was count No. 19 in our complaint, yes, he was. I might say, he was not charged with the specific amount.

Mr. Stallard: No, Your Honor please—

A. (Continuing) He was charged with receiving compensation for bird-dogging.

Mr. Stallard: This is F. A. Arnold, $1500. This says F. A. Arnold. I want to know who F. A. Arnold is.

[fol. 176] A. Oh, F. A. Arnold is also a defendant, yes.

Mr. Stallard: F. A. Arnold?

A. I was looking at Klein here, they were both defendants.

By Mr. Bowles, Jr.:

Q. Now, this Exhibit I is the Bauer case, I believe, is it not?

A. Yes.

Q. And now, tell me the same information shown there; what was the commission paid to Mr. Clinkenbeard in that case?

A. Mr. Clinkenbeard's commission was $2,662.52.

Q. Then how much did the bird dogs get?

A. There was only one bird dog, D. G. Klein, who was a defendant in our case, an officer of the lodge. He received $1,000.

Q. He got a thousand dollars for taking his friend to see the regional counsel?

A. Yes.

The Court: May I have, off the record, or put it on the record, if you want to, I would rather ask it off the record.

Mr. Bowles, Jr.: That is all right.

[fol. 177] The Court: Off the record.

(Discussion off record.)

Mr. Bowles, Jr.: Would you have any objection, sir, to having him explain that, what is in there, on the record—what he has just told to you?

The Court: He says it is in the deposition.

Mr. Bowles, Jr.: Yes, it is.

The Court: Do you object to him putting that on the record, Mr. Stallard?

Mr. Stallard: No, I do not.

The Court: Ask him the question then, on the record.

By Mr. Bowles, Jr.:

Q. Mr. Nelson, would you explain exactly the operation of the so-called "bird dog" that is explained in the testimony in this, in re Beck case, shown in the exhibits that have been filed; just briefly summarize it for the benefit of the Court.

A. Yes, if I could refer to the deposition of Mrs. Matson, I think I could do it better. Well, here, I was asking her, and by the way, she would say she had worked for several years as a secretary of the office of the law firm, and now asking her about how the leads were given to the regional investigators, I asked this question:

"Q. You stated that they were given leads; how were [fol. 178] these leads given to the regional investigators?

"A. They came in various ways where a large accident had occurred, I mean it was knowledge, they quite often went to the scene.

"Q. Now, would you define a bird dog?

"A. Well, bird dogs were men that were, shall we say, responsible in a way to the investigators, only as far as letting him know when there had been any injury or any accident. They would be possibly part of a crew or something on this particular accident, but they would have firsthand and immediate notice, and they would notify the

investigator where they were working and who they were working for, and of course, the investigator would move on out."

And then later on, in this deposition, she says—

Q. Would you indicate the page, please, sir?

A. I was reading from page 13 of the Exhibit L. Now, on page 31, underneath this talking about the records,

"A. Underneath the name of the investigator that was credited was usually the name of the man, if a bird dog had been used, his name would appear, and of course if not, it was assumed that the investigator had signed the case.

[fol. 179] "Q. Would there be anything after this same name or next to the name of the bird dog to indicate who he was?

"A. They used the letter on the sheets quite often, 'BD' for bird dog. The words 'bird dog' never actually appeared, but the letters were there."

Mr. Verbon also testified to the bird dogs, and the fact that frequently when he would call, he was regional investigator, he would call out there, and he couldn't find out an individual, then he would go and find out who their friends were, and get them maybe to go along and maybe send them out there independently to try to persuade them to employ the regional counsel. It would take me some time to try to identify the particular testimony here, but that is the substance of it.

The Court: The use of a friend like that, he would become, as you call it, a "bird dog," and he would be paid eventually after the recovery?

A. Yes, and they apparently had no fixed amount that they paid them. It depended generally upon the amount of the settlement, ranging from $50, $100, $200, or $300, and up to as high as we have this one, of $1,500. That was a big case, of course.

[fol. 180] By Mr. Bowles, Jr.:

Q. Do you happen to know what the settlement was in those two cases?

A. I believe in the Frye case it was $175,000. The total settlement is shown on the exhibit.

The Court: Yes, it is shown.

Mr. Bowles, Jr.: Witness is with you.

Cross examination.

By Mr. Stallard:

Q. Mr. Nelson, when did Mr. Verbon testify in the case we have just been citing here?

A. I would have to refer to the exhibit.

The Court: That transcript.

A. (Continuing) Here, he testified commencing on June 16, 1958.

By Mr. Stallard:

Q. Well, did you know when he testified in June, 1958, that he had been fired by the Railroad Brotherhood as an investigator?

A. I knew he was not employed by them as an investigator.

Q. Will you refer to Exhibit D. I direct you to the year 1956 at the top of the page, but it is carried on to 11-1-57, [fol. 181] and ask you to read what it says with reference to Verbon.

A. It says 11-1-57 "Verbon taken off payroll."

Q. Do you know—did he tell you why he was taken off the payroll?

A. Yes, I think that was at the time that they were—they split up the firms, and he was originally hired by Rerat and worked for Rerat and that firm, and then when the split-up came, why he went with Davis & Lush.

Q. Well, did he tell you that he was fired by the Railroad Brotherhood in 1957?

A. No, I knew he wasn't working there. I think when he first went to work here as an investigator, he was not a member of the Brotherhood, and it wasn't until way later, and I thought that was shown by some of these records,

December, I believe it was December of 1956, when he was put on the payroll. Prior to that his commissions were just paid direct by the law firm, but then he was put on the payroll for the Brotherhood and given a card, although he was not a Brotherhood employee, in order that he could also get the benefits of the railroad retirement and the other.

Q. Then you knew that he was fired by the Brotherhood for an incident out in Montana in 1957, didn't you?

A. Oh, yes, I knew he was. I didn't know whether he was [fol. 182] fired or not; I knew he was arrested because of this ambulance chasing he was doing.

Q. Well, didn't President Kennedy testify on June 1, 1961 in Cleveland that he fired by telegram Verbon when he was arrested out there in Montana in 1957?

A. Yes, I believe Verbon testified to that in the record.

Q. He testified that he was no longer a friend of the Railroad Brotherhood's, didn't he?

A. He may have said that, I don't recall that; he was very unfriendly to Rerat.

Q. Wasn't he unfriendly, and that is the reason he used the word "bird dog," wasn't he very unfriendly to the Railroad Brotherhood when he testified here in 1958?

A. Oh, I don't think so. In fact, that is brought out by many records that we have as Mrs. Matson said, they used the initials B.D. and many of the records we procured showed the B. D. It didn't on these particular ones.

Q. Well, now, do you know where Verbon is now?

A. No, I do not.

Mr. Stallard: That is all.

The Court: Any further questions?

[fol. 183] Redirect examination.

By Mr. Bowles, Jr.:

Q. Mr. Nelson, do you have any other records here that have any bearing upon any of the things that Mr. Stallard asked you?

A. Oh, I don't know. I have got another brief case full

of records, but I don't know whether they would add anything or merely encumber the record.

Q. Well, what is the status of the in re Beck case, is that closed?

A. Oh, yes.

Q. That is finished and over?

A. I have got here, for example, considerable correspondence with reference to particular accounts we had correspondence taken from the Brotherhood's files. I don't know whether they are helpful or not.

Q. I would not think so. We don't want to clutter up this record with the trial of your case except insofar as it relates to the same, and so forth.

A. There was only—

Q. Thank you, sir, that is all.

A. There was only this one, if this would have any beneficial help, a fellow, secretary and treasurer of the lodge, and was injured and after considerable correspondence, [fol. 184] trying to get him to employ regional counsel, he settled his own case. I don't know whether that would help any.

Q. Well, put that one in, sir, as an exhibit.

Mr. Stallard: Well, Your Honor, please, I think the record is going to be encumbered, because there is no specific purpose for introducing all of this.

Mr. Bowles, Jr.: Well, we won't offer it then.

Mr. Stallard: I would like to ask one more question.

Mr. Bowles, Jr.: Do you have any objection to it?

Mr. Stallard: Yes, I do have an objection.

Mr. Bowles, Jr.: Well, we won't offer it.

Mr. Stallard: I would like to ask one more question of the witness, Your Honor.

The Court: Yes, sir.

Recross examination.

By Mr. Stallard:

Q. You testified, Mr. Nelson, that a friend of the injured man, may not be an officer of the railroad when he suggests employment to counsel?

A. An officer of the local lodge.

[fol. 185] Q. Local lodge?

A. Yes.

Q. In other words, he might be any friend, the bird dog might be any friend?

A. Yes.

Q. Wouldn't have any connection with the Brotherhood, whatsoever?

A. I suppose as a general rule, they did, but no, it wouldn't be necessary.

Q. That is an assumption, isn't it?

A. What?

Q. You said that.

A. Well, yes, I know I have talked to, of course, many of them, and they were generally employed; maybe not members of the Brotherhood, but members of other crafts.

Q. Well, as I understand it, the lawyer here paid somebody for assisting in getting the case to his office, and he might not even be a member of the Railroad Brotherhood, the defendant in this case?

A. Oh, yes, that was true.

Mr. Stallard: That is all.

Mr. Bowles, Jr.: That is all.

The Court: Mr. Nelson, are you planning to remain for the rest of the case, or do you wish to be excused?

[fol. 186] The Witness: I can get a plane out of here at 2:50, Your Honor, if I am not needed. I would appreciate being able to get out, and I can get to Omaha this evening, if I can catch this 2:50 plane.

Mr. Bowles, Jr.: That is agreeable with us.

Mr. Stallard: Agreeable with me, Your Honor.

The Witness: If it would help anything, I will stay. If I should be needed, I will stay, but I would like to leave.

The Court: Both counsel said they don't think they need you any further.

(Witness excused.)

The Court: I will want a recess at this time. I will ask counsel and Mr. Nelson to come into chambers.

(Recess)